TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted] 170

CHARLES S. BOHLER, TAX COLLECTOR OF RICHMOND COUNTY, GEORGIA, ET AL., APPELLANTS,

vs.

E. H. CALLAWAY, AS EXECUTOR OF THE ESTATE OF J. B. WHITE, DECEASED

No. [redacted] 171

E. H. CALLAWAY, AS EXECUTOR OF THE ESTATE OF J. B. WHITE, DECEASED, APPELLANT,

vs.

CHARLES S. BOHLER, TAX COLLECTOR OF RICHMOND COUNTY, GEORGIA, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA

FILED SEPTEMBER 12, 1925

(29,861, 29,862)

(29,861, 29,862)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1923

No. 551

CHARLES S. BOHLER, TAX COLLECTOR OF RICHMOND COUNTY, GEORGIA, ET AL., APPELLANTS,

vs.

E. H. CALLAWAY, AS EXECUTOR OF THE ESTATE OF J. B. WHITE, DECEASED

No. 552

E. H. CALLAWAY, AS EXECUTOR OF THE ESTATE OF J. B. WHITE, DECEASED, APPELLANT,

vs.

CHARLES S. BOHLER, TAX COLLECTOR OF RICHMOND COUNTY, GEORGIA, ET AL.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA

INDEX

	Original	Print
Record from U. S. district court for southern district of Georgia	1	1
Complaint	1	1
Exhibits A-1 to A-7, Inclusive, to Complaint—Tax executions	32	21
Exhibit A-8 to Complaint—Assessment table	36	25
Exhibits B-1 to B-7, Inclusive, to Complaint—Rejections of tax returns of J. B. White	37	26

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 15, 1923

	Original	Print
Exhibit C to Complaint—List of stocks, etc	39	28
Exhibit D to Complaint—Letter, E. H. Callaway to C. A. Steed	40	29
Exhibit E to Complaint—Oath of Gray and May as arbiters	41	30
Exhibit F to Complaint—Report of Gray and May	42	30
Exhibit G to Complaint—Certificate of appointment of Carr as umpire	43	31
Exhibit H to Complaint—Oath of Carr as umpire	44	31
Temporary restraining order	45	31
Writ of injunction and service	47	33
Motion to dismiss and order overruling same	49	34
Response	54	37
Amendment to complaint	98	74
Exhibit I to Amendment to Complaint—List of real estate in city of Augusta, Ga	101	76
Response	102	76
Opinion, Evans, J., and decree granting temporary injunction	110	82
Amendment to complaint	112	83
Exhibit I to Amendment—Record of case of State of Georgia vs. Callaway, executor, in supreme court of Georgia	116	85
Bill of exceptions	116	85
Petition of State of Georgia	118	86
Exhibit A to Petition—Oath of Gray and May, etc	129	93
Order settling bill of exceptions	132	93
Opinion, Gilbert, J	133	94
Judgment	137	96
Exhibit J to Amendment—Record of case of State of Georgia vs. Callaway, executor, et al. in Richmond superior court	138	97
Supplemental petition of State of Georgia	139	97
Exhibit A to Supplemental Petition—Original petition of State of Georgia	148	103
Exhibit A to Petition—Oath of Gray and May	158	110
Exhibit B-1 to Petition—Rejections of tax returns of J. B. White and affidavit of M. H. McPherson with exhibit	168	114
Exhibit B-2 to Petition—Brief of testimony of J. B. Clews	176	124
Exhibit C-1 to Petition—Memorandum of the report of the comptroller general	177	125
Exhibit C-2 to Petition—Brief of affidavit of J. B. Clews	178	126
Exhibits C-3 and C-4 to Petition—Brief of affidavit of John W. Dickey	179	126
Exhibit C-5 to Petition—Brief of affidavit of Rufus H. Brown	180	127

	Original	Print
Exhibit C-6 to Petition—Affidavit of E. H. Callaway	180	127
Exhibit C-6 to Petition—Joint affidavit of James S. Bussey, Jr., and Henry G. Howard	181	128
Exhibit C-7 to Petition—Inventory of estate of Benson in 1916	181	128
Brief of affidavit of E. H. Callaway	181	128
Exhibit C-8 to Petition—Brief of testimony of C. A. Steed	182	128
Exhibit D to Petition—Letter, Callaway and Steed to James T. Gardiner, August 22, 1919	184	130
Order to show cause	185	130
Process	186	131
Amendment to petition	188	132
Exhibit A to Amendment—Affidavit of M. C. B. Halley	193	135
Intervention of Richmond County	195	136
Amendment to petition	196	136
Exhibit A to Amendment—Testimony of J. B. Clews	205	142
Exhibit B to Amendment—Affidavit of J. B. Clews	208	144
Exhibit C to Amendment—Affidavit of John W. Dickey	210	145
Exhibit C-1 to Amendment—Affidavit of Rufus H. Brown	213	147
Exhibit D to Amendment—Affidavit of E. H. Callaway	215	148
Exhibit E to Amendment—Joint affidavit of Bussey and Howard	217	149
Exhibit F to Amendment—Inventory and appraisement of estate of Wm. E. Benson	218	150
Exhibit G to Amendment—Affidavit of E. H. Callaway	221	152
Exhibit H to Amendment—Statement of Judge Callaway	223	153
Testimony of C. A. Steed	224	153
Extracts from report of special tax commissioners	230	157
Exhibit J to Amendment—Resolutions of board of commissioners of roads and revenues of Richmond County	232	159
Demurrer of E. H. Callaway	237	162
Order sustaining demurrer	241	165
Amended demurrer of E. H. Callaway	242	165
Renewal of demurrers	244	166
Bill of exceptions and order settling same	245	167
Exhibit J to Amendment Continued—Record in supreme court of Georgia	250	176

	Original	Print
Opinion, Fish, C. J., and Hines, J.	259	176
Concurring opinion, Beck, P. J.	265	179
Concurring opinion, Atkinson, J.	267	180
Remittitur	269	180
Judgment of Richmond superior court on remittitur	269	181
Clerk's certificate	270	181
Amendment to complaint	271	182
Exhibit K to Amendment—Tax receipt	276	185
Motion to dismiss amendment, etc.	277	186
Order overruling motion to dismiss	278	187
Response to amendment	279	187
Amended response	281	188
Response to amendment	283	188
Opinion, Barrett, J.	287	190
Petition for and order allowing appeal	303	199
Citation (omitted in printing) and service	305	200
Transcript of the evidence	308	201
Offers in evidence	308	201
Exhibit C-8—Testimony of C. A. Steed	310	202
Affidavit of E. H. Callaway	311	203
Exhibit 1 to Callaway's Affidavit—Brief of joint affidavit of McPherson and Dugal	317	207
Exhibit A to Joint Affidavit—List of stocks and bonds owned by J. B. White	317	208
Exhibit 2 to Callaway's Affidavit—List of stocks	318	209
Notation as to Exhibit 3 to Callaway's Affidavit	318	209
Exhibit 4 to Callaway's Affidavit—Oath of Gray and May as arbiters, etc.	320	209
Exhibit 5 to Callaway's Affidavit—Check, Callaway to Bohler and explanatory statement	321	210
Extracts from official reports of comptroller general	322	210
Extracts from annual report of State tax commissioner	324	212
Brief of affidavit of E. H. Callaway	327	216
Excerpt from report of State tax commissioner	328	217
Brief of an address by State tax commissioner	329	217
Inventories and tax returns on various estate in Richmond County	331	218
Brief of affidavit of J. P. Verdery	335	221
H. K. Lowery	336	222
H. R. De Jarnette	336	222
J. G. Herren	338	223
A. C. Zachry	339	224
A. H. Winter	339	224
P. N. Combs	339	224
F. B. Sims	340	225
Clement E. Sutton	340	225
Frank E. Callaway	341	225
J. E. Camp	342	225
Sam L. Graham	343	226
Idus E. Brewer	343	226
J. A. Roberston	344	227

	Original	Print
Brief of affidavit of Geo. T. Daniel	344	227
W. S. Hubbard	345	228
G. E. Parks	346	229
B. Paul Smith	346	229
E. F. Lowell, Jr	346	229
A. B. Moore, Jr	347	229
W. D. Graham	347	229
J. Frank Carswell	347	230
E. B. Harrold	348	230
W. K. Young	349	231
Morris Harris	349	231
W. W. Hardaway	349	231
G. W. Lokey	350	232
W. A. Watson	350	232
A. M. Marshall	350	232
C. D. Leonard, Jr	352	233
T. O. Walker	352	233
H. D. Glanton	352	233
T. J. Thornton	353	234
H. C. Butler	353	234
John Lampkin	353	234
P. B. Mundy	353	235
Jesse C. Palmer	354	235
G. W. Graham	354	236
William H. Davis	355	236
E. E. Chance	357	237
W. M. Fulcher	358	238
E. H. Callaway	358	238
Stipulation for abatement of certain assessments	360	239
Offers in evidence	361	240
Testimony of J. B. Clews	361	240
Brief of affidavit of Marcus S. Baker	364	242
C. A. Steed	364	242
M. C. B. Halley	366	244
Benjamin E. Pierce	367	244
William A. Wright	368	245
Excerpts from instructions of comptroller general to various tax receivers	368	245
Brief of affidavit of H. J. Fulbright	369	246
C. O. Perry	371	247
L. A. Hall	371	247
L. D. Gribble et al	371	247
Stipulation as to transcript of evidence	373	249
Assignment of errors	374	250
Bond on appeal (omitted in printing)	422	284
Præcipe for transcript of record	425	284
Clerk's certificate	429	286
Petition for and order allowing cross-appeal	430	287
Assignment of errors on cross-appeal	432	288
Bond on cross-appeal (omitted in printing)	436	290
Citation (omitted in printing) and service	438	291
Clerk's certificate	440	291

[fol. 1] IN THE

DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

In Equity

E. H. CALLAWAY, as Executor of the Will of J. B. White, Plaintiff,

vs.

CHAS. S. BOHLER, Tax Collector of Richmond County, Georgia; Clifford A. Steed, Tax Receiver of Richmond County, Georgia, and J. T. Plunkett, Sheriff of Richmond County, Georgia, Defendants.

ORIGINAL COMPLAINT

To the Honorable the Judges of the District Court of the United States in and for the Southern District of Georgia, Northeastern Division:

E. H. Callaway, a resident and citizen of Richmond County, Georgia, in said Division and District, as Executor of the Will of J. B. White, formerly of Richmond County, Georgia, brings this his Bill against Chas. S. Bohler, a resident and citizen of Richmond County, Georgia, Clifford A. Steed, a resident and Citizen of Richmond County, Georgia, and J. T. Plunkett, a resident and citizen of Richmond County, Georgia, and all of said defendants being residents of said Division and District, and thereupon your Orator complains and says:

1. That your Orator is the duly appointed and qualified Executor of the Will of J. B. White, formerly of Richmond County, Georgia, and as such has been in possession of, and administering the Estate of said J. B. White, and is still acting as Executor of said Will.

2. That said Defendant Chas. S. Bohler, is the duly elected, qualified and acting Tax Collector of said Richmond County, Georgia, whose duty it is under the laws of said State to collect the State and County taxes levied and assessed in said County and who is authorized by law to issue tax executions for such taxes; that said Defendant, Clifford A. Steed, is the duly elected, qualified and acting Tax Receiver of said County, whose duty it is to receive Tax returns, make assessments, and to enter the final assessments upon the Tax [fol. 2] Digests of said County, and said Defendant, J. T. Plunkett, is the duly elected, qualified and acting Sheriff of the County of Richmond, State of Georgia, and one of his duties is to levy tax executions issued and delivered to him by said Tax Collector.

3. That the amount or sum in controversy herein, exceeds the sum of $3,000, as will hereinafter more fully appear, and the matters

herein referred to and the questions herein presented, arise under the Constitution of the United States and under the Acts of Congress.

4. That on the 9th day of March 1922, the said Defendant, Chas. S. Bohler, as Tax Collector of said Richmond County, issued seven (7) separate tax fi. fas. against your Orator in his representative capacity as Executor of the estate of said J. B. White for what is pretended and claimed to be back taxes against said estate for State, County and School taxes, for the years from 1911 to 1917 inclusive, said fi. fas. being for principal amounts as follows: For 1911, $13,552.20; for 1912, $18,888.68; for 1913, $22,751.19; for 1914, $31,527.42; for 1915, $21,011.75; for 1916, $22,347.05, and for 1917, $25,490.01, each of said fi. fas. bearing interest at the legal rate of 7% from December 20th of the year for which it was issued,—the aggregate amount of the principal of said tax fi. fas. being $145,568.30, and the accrued interest thereon being $70,764.01, or a total of $216,332.31, copies of said fi. fas., together with a statement of the alleged assessments upon which said fi. fas. were issued, and the tax rates for the several years as furnished by said Tax Collector to your Orator, being hereunto attached marked Exhibits "A-1," "A-2," "A-3," "A-4," "A-5," "A-6," "A-7" and "A-8," reference to which is hereby made as often as may be necessary.

5. That said Chas. S. Bohler, Tax Collector as aforesaid, has entered said executions upon the execution docket and has delivered the same to said J. T. Plunkett, Sheriff of said County, with instructions to levy the same upon the assets and property belonging to the estate of your Orator's testator for the purpose of selling the [fol. 3] same and enforcing collection of said fi. fas.

6. Your Orator alleges that each and all of said tax fi. fas. are illegal, contrary to law and are void for the reasons hereinafter set forth, and should be cancelled, set aside and the entry thereof on the execution dockets of said Richmond County cancelled, as a cloud upon the title to the property belonging to the estate of said J. B. White.

7. That your Orator's testator, J. B. White, as your Orator is informed, was not a citizen of the United States, but a native of Ireland, and though he resided in Richmond County, Georgia, from 1866 to August, 1909, he never became a naturalized citizen of the United States, and in the Summer of 1909 he left the State of Georgia, and the United States, and returned to Europe, and remained in Europe, without returning to the United States, until his death at Genoa, Italy, on March 31st, 1917; that whether said J. B. White left the City of Augusta and the United States with the intention of returning or not returning, your Orator does not know, but he alleges upon information and belief, that within a couple of years after leaving the United States, he had permanently abandoned all idea of ever returning to the United States and that during said entire period from 1911 to 1917, inclusive, he was a non-resident alien of the United States.

8. That prior to the time said J. B. White left the United States n the Summer of 1909, all of his real estate holdings which amounted o nearly a million dollars, and as far as your Orator knows, his ersonal property and securities liable for taxation, were duly re- urned and assessed for taxation, and all taxes thereon paid, said Vhite being the largest individual taxpayer in the City of Augusta nd in said Richmond County, and one of the largest in the State.

9. Your Orator alleges, upon information and belief, that none f the securities which are sought to be taxed by the assessments pon which said tax executions have issued, except the local securi-
fol. 4] ties for the year 1917, were ever in the physical possession f said J. B. White, nor did the stocks in corporations stand in his ame. That said securities, including both stocks and bonds, were ought by Henry Clews & Co., a brokerage or commission firm, of ew York, on what is known as margins, the said Clews & Company aking the title to said stocks in their own name and retaining the ossession of such bonds as were purchased, and charging the bal- nce of the purchase price against said securities, which said bal- nce was subsequently, from time to time, paid off and discharged y the proceeds of sales of real estate belonging to said J. B. White n the City of Augusta, and from rents collected from said real state, as well as from the income of said securities.

10. That the local agents which your Orator's testator left in harge of his real estate and other property located in the City of ugusta when he left the United States in the Summer of 1909, eturned said property each year for taxation at its assessed value nd duly paid all of the taxes exacted or required thereon.

11. That after your Orator qualified as Executor of the Will of id J. B. White, upon inquiry he ascertained that the said Henry lews & Co. held in their own name and in their own possession arious and sundry securities of the approximate value of $1,000,000, r more, which belonged to the estate of said J. B. White, and hereupon your Orator, without having the title or actual physical ossession of said securities transferred from the said Henry Clews & o. to your Orator as Executor, left the same with the said Henry lews & Co. as the agent of your Orator as such Executor, but listed id securities in the inventory of said estate which he filed in the ourt of Ordinary of Richmond County, Georgia, and gave the alues of said securities as of the date of the death of your Orator's stator, March 31st, 1917.

12. That all of said securities of said alleged valuation, together
fol. 5] with notes and other choses in action and other local securi- es amounting to a much larger sum, in the aggregate, than the curities covered by the assessment upon which said tax executions aforesaid have issued against your Orator as Executor as aforesaid, ere duly returned by your Orator as Executor as aforesaid, for ate and County taxation in said Richmond County, for the year 918, and the Board of Assessors appointed, qualified and acting

under the Tax Equalizing Act of 1913 for the County of Richmond and State of Georgia, assessed all of the securities, notes and money belonging to said estate, including all the securities covered by the assessments upon which said tax fi. fas. are issued, at the sum of $250,000 for taxation for said year, and your Orator duly paid the taxes on said securities for the year 1918, to the State, County and other taxing authorities authorized by law to collect taxes.

13. That thereafter, when the Tax Receiver of said Richmond County, to-wit: Clifford A. Steed, obtained a list of the securities held by said Henry Clews & Co. of New York, and standing in their name, from the inventory which your Orator, as Executor, had filed in the Court of Ordinary of said Richmond County, Georgia, and called upon your Orator, by notice as provided by the Statute Law of the State, set forth in Parks' Political Code of Georgia, Sec. 1057, to make return of said securities for taxation under the provisions of the Acts of the General Assembly of Georgia in such cases provided, your Orator contended with the said Tax Receiver that said securities were not taxable for the reason, among others, that neither the title nor actual possession of said securities had ever been in your Orator's testator, the said J. B. White, and that the title, as well as the possession of all of said securities, had been held continuously since they were acquired, by the said Henry Clews & Co. of New York, and that during all of the years from 1911 to 1917, inclusive, your Orator's testator, the said J. B. White, had been a non-resident alien of the United States, and said securities, being personal property, [fol. 6] were not liable or subject to taxation by the State of Georgia and County of Richmond, and your Orator thereupon, under protest, filed returns with said Clifford A. Steed, Tax Receiver of said County, for each of the years from 1911 to 1917 inclusive, for such personal property only as your Orator had knowledge of that his said Testator had owned during each of said years, accompanying the same with a written protest.

14. That thereupon, the said Clifford A. Steed, Tax Receiver of said County, rejected said Returns so filed by your Orator, claiming to be acting in pursuance of Sections 1097, 1098 and 1116-d of Parks' Political Code of Georgia, the last named Section being a codification of the Act of the General Assembly of Georgia approved August 13th, 1910, and proceeded to issue assessments against your Orator as Executor of said J. B. White for each of the years from 1911 to 1917, inclusive—copies of said assessments so made by said Tax Receiver being hereunto attached marked Exhibit "B-1", "B-2", "B-3", "B-4", "B-5", "B-6" and "B-7", to which the usual leave of reference is prayed as often as may be necessary.

15. That at the time of making said assessments, the said Tax Receiver furnished to your Orator as the basis of information upon which he had made said assessments, an alleged or pretended valuation of the securities which had been held during said years by the said Henry Clews & Co., for account of said White, as follows:

For	1911	$1,012,366.67
"	1912	1,397,671.67
"	1913	1,344,405.83
"	1914	1,556,915.83
"	1915	1,443,500.83
"	1916	1,508,436.00
"	1917	1,375,408.90

and for what was known as local securities and notes included in said assessment, said Tax Receiver furnished to your Orator as information, a typewritten sheet pretending to set forth the valuations thereof, and under the heading "Stocks not Taxed and Deducted", was listed shares of stock in National Banks located in the City of [fol. 7] New York, State of New York, the alleged values of which had been included in the above set forth valuations for each of said years, and though the list indicates that the alleged valuations of said stocks in said National Banks were to be deducted, they were crossed out and not deducted, as appears from a copy thereof hereunto attached marked Exhibit "C".

16. That said action and conduct of said Tax Receiver in making said assessments against the estate of your Orator's testator, was expressly claimed to be in pursuance of the Act of the General Assembly of Georgia of 1910, codified in Parks' Political Code of Georgia, Sec. 1116-d, under which said Tax Receiver claimed to be acting, with the approval and under the direction of the Comptroller General of the State of Georgia, who, under the laws of said State, has charge of the matters of taxation in said State, which said Act expressly provides that the taxpayer so notified in writing of such assessments should have the privilege, within twenty days after receiving such notice, of referring the question of the true value to arbitrators, one to be chosen by himself and one to be chosen by the Tax Receiver, with power to choose an umpire in case of disagreement, and that their award should be final.

17. That your Orator, notwithstanding his belief that said securities so held by said Henry Clews & Co., because of the non-residence and alien citizenship of his testator during the years from 1911 to 1917, the date of his death, inclusive, were not taxable by the State of Georgia or County of Richmond, or any other sub-division or governmental agency thereof, with and for the purpose of spedily winding up said estate and adjusting said matter, determined to submit to the tax assessment system of the State of Georgia as adopted by the legislative branch thereof, and to have the values of said securities for the purpose of taxation, fixed by arbitration in the manner provided by law, and as set forth in the Sections of the Civil Code [fol. 8] hereinbefore referred to, and thereupon your Orator, after receiving the notice of said assessments from the said Clifford A. Steed, dated July 28th, 1919, on the 7th day of August, 1919, notified the said Clifford A. Steed, Tax Receiver of Richmond County, as expressly provided in said Tax Act of 1910, in writing, that your Orator

was dissatisfied with the assessments which he had made upon the personal property of said White for the years from 1911 to 1917 inclusive, under date July 28th, 1919, and exercising the privilege given to your Orator by said Act, within twenty days after receiving from said Tax Receiver notice of said assessments, requested the assessments to be referred to arbitration, as provided by law, and stated therein that your Orator had chosen and selected for said arbitration, P. E. May, and requested the said Receiver to notify your Orator the name of his arbitrator as soon as practicable,—a copy of said written notice being hereunto attached marked Exhibit "D", to which the usual leave of reference is prayed.

18. That thereafter, on the 9th day of August 1919, the said Clifford A Steed, Tax Receiver of said County, notified your Orator that he had appointed Thomas S. Gray as Arbitrator to represent him on behalf of said State and County as Tax Receiver, and furnished to your Orator a copy of the oath of submission which he had prepared and had said Thomas S. Gray and Percy E. May to subscribe and swear to,—a copy of which is hereunto attached marked Exhibit "E."

19. That acting in pursuance of said Act of the Legislature, said Thos. S. Gray and P. E. May being unable to agree either upon the value of the property assessed, or to name an umpire, set forth that fact in writing to the said Tax Receiver, and to your Orator under date August 22nd, 1919, copy of which is hereunto attached marked Exhibit "E." and thereupon your Orator and the said Clifford A. Steed, Tax Receiver, joined in a request to the Board of Commissioners of Road and Revenues of said Richmond County, as pro-[fol. 9] vided in said Act, for the appointment of an umpire by said Board, and said Board, on the 25th day of August 1919, designated as such umpire, Chas. D. Carr, a citizen of said Richmond County, as appears in Exhibit "G" hereunto attached, to which the usual leave of reference is prayed.

20. Thereafter, on the 27th day of August 1919, the said Chas. D. Carr, so selected as umpire in said tax arbitration, subscribed to an oath as prepared and submitted to him, before the said C. A. Steed, Tax Receiver of Richmond County, and subsequently, on September 2nd 1919, subscribed to another oath, to conform to the oath which had been taken by the other arbitrator,—copies of said two oaths being hereunto attached marked Exhibit "H."

21. That as soon as said Umpire had been appointed, Thos. S. Gray, the arbitrator selected by said Tax Receiver, left the City of Augusta and State of Georgia and persistently refused to return for the purpose of holding said arbitration, but was finally induced to return on the evening of Sept. 1st, 1919, upon a notice from said Umpire that the meeting of the arbitrators for the purpose of fixing the value of said properties for taxation, would be held on Tuesday, September 2nd, 1919.

22. That in all matters connected with the selection and organization of said Board of Arbitration, the said Clifford A. Steed, Tax Receiver of said County, was acting under the provisions of the Act of 1910, as set forth in Civil Code Sec. 1116-d, cited above; but notwithstanding said acts and conduct on the part of said Tax Receiver, on the morning of September 2nd, 1919, the date which had been fixed, by agreement of all three of said arbitrators, for the hearing of said matter, counsel representing the State of Georgia and the County of Richmond, and who had represented said Tax Receiver in the designation of said arbitrator, presented an equitable petition to the Judge of the Superior Court of Richmond County, seeking to enjoin the holding of said arbitration, and denying that your Orator was entitled to an arbitration upon various grounds, among [fol. 10] others, that said Board of Arbitrators was illegally organized, and that the assessment and arbitration was called into existence under the Act of 1910 as codified in Parks Code Sec. 1116-d, and that the tax Receiver had administered the oath to said arbitrators which was prescribed by the Equalization Act of 1913, without conferring with counsel representing him or the State, and further charging that the Board did not act within twenty days from August 8th, 1918, the date of the appointment of the arbitrator by the Tax Receiver, and that the time for the arbitration had passed, and that it was the duty of the taxpayer to see that the arbitration had been held within twenty days from the date of the appointment, notwithstanding the fact that it was the arbitrator who had been appointed by the Tax Receiver to represent the County and State who left the County and State immediately after the appointment of the Umpire on August 25th, 1919, and did not return to the State until the first day of September 1919, and further, upon the ground that both the arbitrator selected by your Orator, as well as the Umpire selected, were disqualified by reason of the fact that they were clients of the law firm of which your Orator was a member.

23. That the Judge of the Superior Court of Richmond County, upon the presentation of said petition for injunction, signed an order refusing the injunction prayed for, and counsel representing the State of Georgia thereupon filed exceptions to said decision refusing said injunction, and carried the same to the Supreme Court of Georgia, where the decision refusing the injunction was affirmed by the Supreme Court of Georgia in a unanimous decision rendered May 14th, 1920, which appears in 150th Georgia Reports, page 235.

24. That upon the refusal of said injunction by the Judge of the Superior Court of said County, the Arbitrators selected in the manner hereinbefore stated, in pursuance of said Act of 1910, convened and organized, and counsel representing the Receiver and [fol. 11] the State of Georgia appeared before said Board and submitted evidence, and after hearing evidence and argument from Counsel representing the State of Georgia and County of Richmond, and the Tax Receiver, and the evidence and argument submitted

by your Orator, said Board of Arbitrators rendered the following award:

"State of Georgia, Richmond County, Sept. 2nd, 1919.

The Arbitrators and the Umpire selected as aforesaid having this day had under consideration the valuation of the personal property of the Estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916, and 1917, for taxation upon consideration thereof have fixed said valuation at:

For year	1911	$112,744.83
" "	1912	154,550.67
" "	1913	187,927.98
" "	1914	194,138.96
" "	1915	190,202.74
" "	1916	301,183.67
" "	1917	360,813.92

In witness of which they have hereunto set their hands and affixed their seals, this the day and year above written.

(Signed) Thos. S. Gray, Arbitrator. P. E. May, Arbitrator. Chas. D. Carr, Umpire."

That said award was delivered by said arbitrators to said Clifford A. Steed, Tax Receiver of said County, as required by law, and said award was, in pursuance of the law in such cases made and provided, on September 5th, 1919, entered upon the Tax Digests of said County for the respective years covered thereby.

25. That thereupon, on the 5th day of September 1919, your Orator, being notified by the said Chas. S. Bohler, Tax Collector of said County, that said award had been entered upon the Tax Digest of said County, after verifying the figures and calculations of said Tax Collector made upon the assessments in said award and based upon the tax rates prevailing for each of said years respectively from 1911 to 1917 inclusive, and adding interest thereto at the legal rate of 7%, as provided by Statute in such cases, ascertained the amount so due by your Orator for back taxes for said years from 1911 to 1917 inclusive on said securities which had been assessed by said Tax Receiver, and which had been valued and assessed for taxation in the award of said Arbitrators, aggregated a total amount of taxes [fol. 12] and interest for all of said years, of $27,980.88, and your Orator thereupon tendered to the said Chas. S. Bohler, Tax Collector of said County, said sum of $27,980.88 in full payment of the amount of said taxes and interest due in accordance with said award, for all of said years, which said tender was then and there refused by the said Chas. S. Bohler, Tax Collector as aforesaid, for the reason that he had not received instructions from the Comptroller General of said State to accept the payment of said taxes. That said tender of $27,980.88 in payment of said taxes so claimed, has been a continu-

ing tender, and is still tendered and offered in settlement of said taxes.

26. Thereafter, on the 6th day of September 1919, the State of Georgia, through the same counsel who had appeared before said Arbitrators, filed its equitable petition in the Superior Court of Richmond County against your Orator and said arbitrators, the Tax Receiver and Tax Collector of said Richmond County, to set aside said award and assessment made by said Arbitrators, and to enjoin the Tax Receiver from placing the same upon the Tax Digest of the County, and to enjoin the Tax Collector from accepting or collecting the taxes due upon said assessment, and alleging that the arbitration and award were null and void, for the following, among other reasons:

That the assessment by the Tax Receiver and the arbitration had been under the Act of 1910, Parks Code 1116-d, whereas the oath administered to the Arbitrators by the Tax Receiver had been under the Equalization Act of 1913;

That the amount of the return of the Arbitrators was so small, as compared with the assessment and with what the Plaintiffs claimed was the true value of said securities, as to constitute the same fraudulent in law;

Because the Arbitrators had considered evidence as to what other property in the State, and similar property assessed was returned and assessed for taxation in the State of Georgia, which was charged to be contrary to law, Plaintiffs contending that the Arbitrators had no [fol. 13] authority to make any return except the full true value of the securities in question, regardless as to what valuation was placed by assessment or returns on other property of a similar character in the State and in Richmond County;

Because the Arbitrators refused to find the true value of the securities and property which had been assessed by the Tax Receiver, but on the contrary assumed the authority of equalizers of a court of equity, and that the finding of the Board was so insignificantly small, that it shows upon its face bias and prejudice in behalf of the taxpayer.

It was prayed that the award, as returned by the Arbitrators, be declared to be null and void, and that the same be set aside.

The petition was filed as a supplemental petition to the previous petition seeking to enjoin the holding of the arbitration, and a copy of the latter petition, with all of its exhibits, was attached as an exhibit thereto. Thereafter, in response to a special demurrer by your Orator, the Plaintiff amended said petition by adding full copies of all of the evidence introduced before the Arbitrators on said hearing, and by attaching a copy of the award as made by the Arbitrators, and also subsequently, by intervention, made said Richmond County a party plaintiff in said cause.

27. Your Orator demurred to said petition at the Appearance Term thereof, upon the general ground that the petition set forth no legal or equitable cause of action, and it appeared from the petition that the award was valid, legal and binding, and moved the

dismissal of the same, which said demurrer, upon hearing, was sustained by the Judge of the Superior Court of Richmond County, and the Plaintiffs filed exceptions thereto, and said case was carried to the Supreme Court of Georgia, and a decision rendered therein on the 4th day of March 1922, in which only four, out of the six, Judges [fol. 14] of said Court participated, the decision of all four of said Judges affirming the decision of the Superior Court of Richmond County in sustaining said demurrer and dismissing said petition.

28. That thereafter on the 9th day of March 1922, before the remittitur and decision was transmitted to the Superior Court of Richmond County, under the rules and practice of said Supreme Court, said Defendant, Chas. S. Bohler, Tax Collector as aforesaid issued against your Orator as Executor of the Estate of said J. B. White, the tax fi. fas. hereinbefore referred to and set forth in Exhibits "A-1" to "A-7" inclusive, for the full amounts as set forth in the assessment made by said Clifford A. Steed, Tax Receiver of said Richmond County, on July 28th, 1919, hereinbefore referred to and set forth as Exhibits "B-1" to "B-7" inclusive, which on March 9, 1922 had been entered by said Tax Receiver on the Tax Digest of said County.

29. That the issuing of said tax executions against your Orator as Executor of the Estate of J. B. White, for the full amount of said assessments by the said Defendant, Chas. S. Bohler, Tax Collector of said County, thereby ignoring and repudiating the award made as aforesaid by said Arbitrators and entered upon the Tax Digest of said County in the manner hereinbefore stated, and the placing of said tax executions by said Bohler, Tax Collector, in the hands of said J. T. Plunkett, Sheriff of said County, for the purpose of having the same levied upon the assets and property of the estate of your Orator's testator, was illegal, contrary to law, and is oppressive and discriminatory against the estate of your Orator's testator for the reasons hereinafter set forth.

30. That among the stocks of corporations held by Henry Clews & Company of New York, standing in their names, for the benefit of said J. B. White, for each of the years from 1911 to 1917 inclusive, and included in the assessments by said C. A. Steed, Tax Receiver, on July 28th, 1919, as set forth in Exhibits "B-1" to "B-7" inclusive, and included in said pretended and alleged valuations of said securities as set forth in Paragraph 15 hereof, were 115 shares of [fol. 15] the capital stock of the National Park Bank of New York, and 100 shares of the capital stock of the National Bank of Commerce, of New York, both of said Banks being organized under the Acts of Congress relating to National Banking Associations, and both being located and doing business in the City of New York and State of New York.

31. That under the Acts of Congress relating to National Banking Associations, as set forth in U. S. Revised Statutes, Par. 5219, it is expressly provided that the shares of any National Banking

Association owned by non-residents of any State, shall be taxed in the city or town where the bank is located, and not elsewhere, and under said Act of Congress, neither the State of Georgia nor the County of Richmond have any power or authority to levy, assess or collect any taxes out of the estate of your Orator's testator on account of any interest or ownership which your Orator's testator may have had in stocks in said National Banks during either of the years from 1911 to 1917 inclusive.

32. That said alleged values of said National Bank stocks for said years, as included in said assessments by said Tax Receiver of said stocks for each of said years, were as follows:

For 1911	$62,000
" 1912	61,675
" 1913	61,560
" 1914	57,020
" 1915	61,780
" 1916	65,725
" 1917	99,150
or a total for all of said 7 years, of	$468,910

33. That in addition to the inclusion of said National Bank stocks in said illegal assessment upon which said tax executions have issued as aforesaid, for the year 1913 it appears from the alleged or pretended values thereof furnished to your Orator as aforesaid by said Tax Receiver as the basis of said assessment, that the total alleged or pretended aggregate value of said securites sought to be assessed and taxed for said year, was $1,344,405.83, including said Na- [fol. 16] tional Bank stock, and also including $10,500 of the capital stock of the Southwestern Railway of Georgia, a Georgia corporation which, under the laws of Georgia, is not taxable by the State or County, and yet the assessment made by said Steed, Tax Receiver of said County for said year 1913 on said securities and based upon said alleged valuation, was $1,558,300.83, or an excess in the assessment over the alleged or pretended total valuation, of $213,895, which, after deducting the $10,500, alleged value of the Southwestern Railway stock for said year, and adding $12,000, the alleged aggregate value of two notes held by your Orator's testator for said year, left a net excess of the assessment over the alleged or pretended value, including the stocks in said National Banks, of $212,395, and said assessment, on its face, is excessive, illegal and void to that extent.

34. That for the year 1917 the alleged or pretended value of the securities held by said Henry Clews & Co. according to the information furnished to your Orator by said Tax Receiver as aforesaid for said year, was $1,375,408.50, which included the Southwestern Railroad stock, a Georgia corporation, of the alleged or pretended value of $10,500, and the aforesaid stocks in said National Banks of the City of New York, of the alleged or pretended value of $99,150. That the alleged full value of all local stocks, notes and money in

bank, included in said assessment according to Exhibit "C," was $195,152.19, or a total alleged or pretended full value of all of said securities, notes and money, of $1,570,560.69, whereas the assessment made by said Steed, Tax Receiver, on July 28th, 1919, for the full amount of which said tax fi. fas. for said year have issued, is $1,623,567.52, or an excess in the assessment over the alleged or pretended full value of all of the securities, money and notes, without excluding siad Southwestern Railway stock or the stocks in said National Banks of New York, of $53,006.83.

35. That the excessive and illegal taxes included in the amounts for which said tax fi. fas. issued, based upon the patent errors in said [fol. 17] assessments as described above, for each of said years, according to the tax rates for said years, as appear in Exhibit "A-8" are as follows:

For the year 1911, prin. $837; int. to date $600.54; total, $1,437.54.
For the year 1912, prin. $832.61; int. to date $539.09 total, $1,371.60.
For the year 1913, prin. $3,999.74; int. to date $2,309.83; total, $6,309.57.
For the year 1914, prin. $792.57; int. to date $402.21, total, $1,194.78.
For the year 1915, prin. $901.98; int. to date $338.36, total, $1,240.34.
For the year 1916, prin. $972.73; int. to date $357.47; total, $1,330.20.
For the year 1917, prin. $2,553.71; int. to date $759.71; total, $3,313.42.
That the total thereof for all of said years, is $16,197.71.
That said tax fi. fas. for said sums are illegal, contrary to law, and should be restrained and enjoined from levy and enforcement against said estate of J. B. White, and should be declared null and void, and ordered cancelled.

36. That the aggregate amount of all said Tax fi. fas. issued in the manner aforesaid, is the principal sum of $145,568.30, and interest thereon to date, of $70,764.01, or a total of principal and interest to dated of $216,332.31, whereas the amount of taxes due by the estate of said J. B. White for all of said years inclusive, based upon the award of said Arbitrators rendered September 2nd, 1919, as calculated by said Defendant, Chas. S. Bohler, Tax Collector of said County, is $27,980.88, which said amount was, by your Orator, tendered as aforesaid to said Chas. S. Bohler, Tax Collector as aforesaid, on the 5th day of September, 1919, after said award had been entered upon the Tax Digest of said Richmond County for the respective years from 1911 to 1917 inclusive. That said amounts now demanded and exacted from your Orator as Executor as aforesaid, [fol. 18] by said Defendant Tax Collector and in said Tax fi. fas. and which are sought to be collected by the enforcement of said fi. fas. against the property and assets of the estate of your Orator's testator, is excessive, illegal and in violation of law, to the extent of $188,-

351.43, and said tax fi. fas. should be declared illegal, null and void, and cancelled, and said J. T. Plunkett, Sheriff of said County, should be enjoined from enforcing said tax fi. fas. by levy or otherwise.

37. That said assessments made by said Clifford A. Steed as Tax Receiver of said County, in the manner aforesaid, on the 28th day of July, 1919, were expressly made under the provisions of the Act of the General Assembly of Georgia of 1910, as codified in Parks Political Code of Georgia Par. 1116-d, which expressly provides for the right of arbitration to the taxpayer when dissatisfied with the assessment as made by the Tax Receiver, on the ground that the same is excessive.

38. That the right of your Orator to arbitration under the provisions of said Act and said section of the Code, which was sought to be denied to your Orator in the equitable petition filed in the name of the State of Georgia against your Orator and the Arbitrators who had been selected in pursuance of the provisions of the Section of the Code referred to above, on September 2nd, 1919, in which an injunction against the holding of said arbitration was sought and prayed for, was fully and finally established and determined by the decision of the Superior Court of said Richmond County in denying and refusing said injunction upon all of the grounds in said petition set forth, and in the affirmance of said decision by the Supreme Court of Georgia in the case of the State of Georgia vs. Callaway, Executor, et al., reported in 150 Ga. Rep. p. 235. That said decision by the Supreme Court of Georgia is res adjudicata as to the right of your Orator to arbitration of said assessments as made by said Tax Receiver against the estate of your Orator's testator, and [fol. 19] as to the legality of the organization of said Board of Arbitration under the then prevailing statute law of the State of Georgia applicable in such cases, and so far as the right of your Orator to arbitration was concerned, and so far as the legality of said Board of Arbitrators is concerned, is conclusive and binding under the laws of Georgia.

39. That after the attempt to enjoin said arbitration proceedings and deny to your Orator the right to arbitration of the assessments made by said Tax Receiver had failed, and counsel now representing the State of Georgia and the County of Richmond appeared with said Tax Receiver, before said Board of Arbitrators and participated in said arbitration by introducing evidence and in making arguments before said arbitrators, and when said arbitration was completed and said arbitrators, in compliance with the Statutes governing such proceedings, made their unanimous award assessing said securities in question for each of the years for which the assessments had been made, said award, under the Statute in such cases, became final upon the State of Georgia, County of Richmond and all other taxing authorities, as well as upon your Orator, and when the amount of said assessment so fixed by arbitration was entered upon the Tax Digest of said County for the years respectively from 1911 to 1917,

the same became conclusive and final and fixed the only assessments upon which, under the law, taxes could be levied or collected for said years on said securities of the estate of your Orator's testator.

40. That the subsequent filing of the equitable petition in behalf of the State of Georgia by counsel now representing the State in said tax proceedings, attacking the legality and validity of said award, and seeking to set the same aside upon the grounds, among others, *or* fraud, and that the amount of the award for each of said years respectively was too small, and so small as to amount to fraud, and that said assessors were bound to find under the evidence adduced [fol. 20] before the arbitrators, which was incorporated in said petition by amendment, the full alleged value of the securities sought to be assessed and taxed, and seeking to enjoin said award, to have the same declared null and void, and to enjoin the Tax Collector of said County from accepting the taxes due based upon the amount of said assessments so fixed by said award, which said petition was dismissed by the Superior Court of Richmond County on a general demurrer, and the relief and injunction prayed for denied, and which said decision was affirmed by the Supreme Court of Georgia in its decision rendered March 4th, 1922, in said cause, established the fairness, legality and binding force of said award and fixed the same as the true assessment under the Statutory laws of Georgia, as the only amounts and only assessments upon which taxes against the estate of your Orator's testator, could be levied or collected on said securities for said years, and fixed the only amounts for which executions for such taxes could be issued against the estate of your Orator's testator.

41. Your Orator is informed and charges that the Defendant, Chas. S. Bohler, Tax Collector of said County, after said decision of the Supreme Court of Georgia, in the case aforesaid, was rendered on March 4th, 1922, acting under the advice of Counsel representing said State and County in the previous litigation, and ignoring the assessments as fixed by said award which had been entered upon the Tax Digests of said County as provided by the laws of said State, issued said Tax Executions set forth in Exhibits "A (1 to 7)" claiming to act under the provisions of an Act of the Legislature of Georgia approved July 31st, 1918, (Acts 1918 p. 232) wherein it is provided that where the owner of property has omitted to return the same for taxation at the time and for the years the return should have been made, it shall be the duty of the Tax Receiver to assess such property for taxation from the best information he can obtain as to its value for the years in default, and notify such delinquent of the valuation, which shall be final unless the person so notified raises the question [fol. 21] that it is excessive, in which event the future procedure shall be by petition in equity, in the Superior Court of the County wherein such property is assessed.

42. That prior to the passage of said Act of 1918, the statutory laws of Georgia with reference to the assessment and collection of taxes where the owner of property had omitted to return the same,

and under which the Tax Receiver of said County proceeded in making the assessment against said estate of J. B. White on July 28th, 1919, are contained in the Act of the Legislature of said State approved August 15th, 1908, Public Acts 1908, p. 25 as amended by the Act of the Legislature of said State approved August 13th, 1910, Pub. Acts of 1910, p. 27, which said Acts are codified in Parks Political Code of Georgia, Secs. 1055, 1057, 1059, 1061, 1116-a and 1116-d.

That in the last Section of the Code cited above, it is expressly provided that after the Tax Receiver makes the assessment from the best information he can procure, the person so notified of said assessment shall have the privilege, within twenty days after receiving such notice, of referring the question of the true value to arbitrators, one to be chosen by himself, one to be chosen by the Tax Receiver, with the power to chose an umpire in case of disagreement, and their award shall be final. Said Act further provides that in the event said two arbitrators shall fail to agree or to name an umpire within twenty days after their appointment, an umpire shall be named by the Ordinary or County Board of Commissioners of the County as the case may be.

43. That prior to the passage of said Acts of 1908 and 1910, the universal and uniform method of finally assessing and fixing the valuation of all property in Georgia for taxation, except in instances where the owner had defaulted or failed to return his property for taxation, was by arbitration, and said arbitration method was uniformly applied to all classes of taxable property within the State of Georgia. That said Act of 1908, as amended by the Act of 1910, [fol. 22] applied the same method of arbitration in cases where the owners of said property had omitted to make returns thereof at the times and in the years for which said property should have been returned, said Acts covering both classes of property to be returned to the Tax Receiver of the County and that class of property to be returned to the Comptroller General of the State, thereby making the system of arbitration applicable in the assessment of all classes of property, without exception.

44. That the tax act known as the Tax Equalization Act passed by the General Assembly and approved August 14th, 1913, codified in Parks Pol. Code, Secs. 1116-f to 116-v, inclusive, still preserved the method of arbitration in finally fixing the assessment of values of property for taxation.

45. That said Act of 1918 recited above, expressly reserved to the taxpayers of said State required to make their returns to the Comptroller General of said State who may have omitted to return their property for taxation at the times and for the years for which they should have been returned, the same right of arbitration for finally fixing the values of property in question for assessment and taxation.

46. Your Orator alleges that said Act of 1918 does not either by its express terms, nor by implication, repeal the arbitration provisions of said Act of 1910, as codified in Parks Pol. Code, Sec. 1116-d, as

cited above, but merely provides a cumulative method of procedure and remedy for the taxpayer in the assessment of taxes where the owner of the property has omitted to return the same for taxation, and also to provide machinery for the assessment and collection of taxes on property which had been previously returned, and either grossly undervalued at the time returned, or on property which had been previously assessed for taxation at a figure grossly below its true value.

47. That said Act of 1918 does not mention or refer to the aforesaid Acts of 1908 and the amendatory Act of 1910 codified in Parks [fol. 23] Political Code, Sec. 1116-d, and if it is contended, or should be held, that said Act of 1918 repeals the arbitration provision of said Act of 1910, codified as stated above, or was intended to repeal the same, your Orator alleges that said Act of 1918 is ineffective as a repealing statute, and such attempted repeal was a direct violation of the provision of the Constitution of the State of Georgia, as set forth in Art. 3, Sec. 7, Par. 17 (Georgia Civil Code Sec. 6445), as follows:

"No law, or section of the Code, shall be amended or repealed by mere reference to its title or to the number of the section of the Code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, as well as the alteration to be made."

48. That the provision of said Act of 1918 providing for a reassessment of property of the taxpayer which had been previously returned and assessed for taxation, is retroactive legislation and is in violation of Art. 1, Sec. 3, Par. 2 of the Constitution of the State of Georgia (Civil Code Sec. 6389) which prohibits the Legislature from passing any ex post facto law or any retroactive law, and in like manner is in violation of the provisions of Art. 1, Sec. 9, Par. 3 of the Constitution of the United States (Civil Code Sec. 6647) which prohibits the passage of any ex post facto law.

49. That should it be contended or held that the Act of 1918 repealed the arbitration provision of the Act of 1910 (Parks Pol. Code Sec. 1116-b) and thereby denies to the estate of your Orator's testator and other taxpayers or estates of deceased taxpayers who are required to make their returns to the Tax Receivers of the various counties of the State, said Act of 1918 is, in that respect, directly and expressly discriminatory as it expressly preserves to that class of taxpayers who are required by law to make returns to the Comptroller General of the State and who may have either omitted to return property for taxation at the time or for the years the return should have been made, or, having returned property, or a part of the same, grossly [fol. 24] undervalued the property returned, or the property has been assessed for taxation at a figure grossly below its true value, the full right and privilege of arbitration, as in the case of all other taxpayers and owners of property liable for taxation in said State, and said Act of 1918, if it accomplishes such discrimination, is in direct violation of the uniformity clause of the tax provision as set forth

in the Constitution of the State of Georgia in Art. 7, Sec. 2, Par. 1 thereof, requiring that all taxation shall be uniform upon the same class of subjects and ad valorem on other property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, and is also violative of Par. 2, Sec. 1, Art. 4 of the Constitution of Georgia (Civil Code Sec. 6358) which is as follows:

"Protection to persons and property is the paramount duty of government, and shall be impartial and complete."

and is in further express violation of the 14th Amendment to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction, equal protection of the laws.

50. That while said system or plan of arbitration adopted by the Legislative Branch of the State Government as the uniform and universal method of finally fixing the values of all property in said State liable to taxation, for assessment and payment of taxes has not produced exact equality of burden in taxation, and has resulted in the assessment of all the property of the State at values greatly less than its full or fair ad valorem value, said system has been uniformly adhered to by the legislative branch of the State Government, and if said Act of 1918, as claimed, denies to the estate of your Orator's testator the statutory right of arbitration, while preserving to all other taxpayers of the State, except those in your Orator's class, said right of arbitration, said Act is discriminatory, illegal, contrary to law, and in violation of the uniformity tax provision, and the impartial protection provision of the Constitution of Georgia as cited [fol. 25] above, and is violative of and contrary to the equal protection clause of the Constitution of the United States, as cited above, and is null and void, and inapplicable in said case.

51. Your Orator charges, upon information and belief, that under the system of taxation and assessment of taxes in said State as provided by the laws of said State and as enforced by the Tax officials using and adopting said system of taxation during said years from 1911 to 1917 inclusive, the assessment and valuation of all property in said State did not average 25% of the full value thereof, and on stocks and bonds, money, notes and accounts, the class of property of the estate of J. B. White sought to be taxed, did not amount to 10% of the true value thereof, whereas the award of said arbitrators fixed the value of said securities—after deducting said palpable errors in the assessments, the alleged or pretended values of said National Bank stocks, and of the Southwestern Rwy. of Georgia—at amounts varying from 12% to 25% of the full alleged or pretended full market value of said securities for said years.

52. That the County Board of Tax Assessors of said County, the legally constituted body for equalizing and assessing property in said County for taxation, for the year 1918 assessed all of said securities, money and notes, at a total of $250,000., whereas for the

preceding year 1917 said Arbitrators, on a less aggregate amount of alleged full values, assessed the same securities, money and notes, at $360,813.92, or 44% greater than the assessment by said County Board of Assessors.

53. That said award made by said Arbitrators under full review thereof and of all of the evidence submitted to the arbitrators, has been approved by the Courts of said State, both by the Superior Court of Richmond County and by the Supreme Court of Georgia, and under the Tax Act of 1910 is final as to the amount of assessments for purpose of taxation, and if the same is to be treated as a nullity by the tax officials of said State and County under said Act of 1918, and your Orator is forced to go into a court of equity [fol. 26] in said County where the amounts of the assessments are to be fixed either at the full value, or the full alleged or pretended value of said securities, or at a value greater than those which have been fixed by an award of arbitrators under the Statute, regular, fair and free from fraud, said action on the part of said tax officials will be clearly discriminatory against the estate of your Orator's testator, in favor of the other taxpayers of the State, and will place upon the estate of your Orator's testator the heavy burden, delays, and expenses of litigation not placed upon the other taxpayers of said State, all of which will be in violation of the uniformity tax provision, and the impartial protection provision of the Constitution of Georgia, cited above, and against the equal protection clause, as well as the due process clause of the 14th Amendment to the Constitution of the United States.

54. That the assessments based upon said award, and the taxes due thereon for said years, which your Orator has tendered, and still tenders and offers to pay, are largely in excess of the assessments made and taxes required of other taxpayers upon the same classes of securities in the State of Georgia, and in the County of Richmond. That comparatively few owners of stocks in non-resident corporations, or of taxable bonds, either return the same for taxation, or are required to return the same by the tax officials of the counties of the State, nor are they assessed, and when returned or assessed, are returned at a nominal value, resulting in assessments and taxation thereon throughout the State at a gross amount as your Orator is informed and believes not exceeding 5% upon the full value thereof, with the result as to money, notes and accounts, not exceeding 10% of the full value thereof.

55. Your Orator charges, upon information and belief, that in said County of Richmond, during all of said years from 1911 to 1917, inclusive, bonds of local corporations owned by residents of said County, were not returned or assessed, for taxation. That during said years the inventories of estates of a large number of deceased residents of said County appear upon the records of the Court of Ordinary of said County, the same source from which the Tax [fol. 27] Receiver obtained the list of securities belonging to the estate of said J. B. White as the basis of this proceeding, showing

taxable securities, money and notes owned by said deceased taxpayers amounting to over a million and a half dollars which had not been returned for taxation nor assessed, and yet notwithstanding said facts neither said Tax Receiver nor any other agent or representative of said State or County, have made any effort to have said securities, money, or notes returned, assessed or taxed for either of said years, or for any preceding year except in the case of one small estate, where the heirs were all non-residents, and the settlement made in that case was at a nominal percentage of the full value. That the Tax Receiver of said County claims that neither he, as Tax Receiver, nor the County Board of Tax Assessors, ever assess any property at its full value, but try to assess real estate at 66 2/3% of its value, and money, notes and securities where returned, at 50% of its value. That even such assessments are subject to the uniform right of the owner to arbitration, which almost uniformly further reduces the assessment.

56. Your Orator therefore alleges that the act of said Tax Receiver in making said assessments of July 28th, 1919, set forth in Exhibit "B-1" to "B-7" inclusive, against the estate of said J. B. White, for said amounts grossly in excess of even the fair market value of said securities, and the issuing of said Tax executions against the estate of said J. B. White by said Tax Collector, as set forth in Exhibit "A-1" to "A-7" inclusive, is grossly discriminatory against said estate, and is an administration of the law by said tax officials in a manner, and with results grossly discriminatory against said estate, and in violation of the uniform provision of the tax clause, and the impartial protection clause, of the Constitution of Georgia, and is contrary to and in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

57. That the tax executions issued as aforesaid by said Chas. S. [fol. 28] Bohler, Tax Collector, against your Orator as Executor as aforesaid, have been placed in the hands of said Defendant, J. T. Plunkett, Sheriff of said County, for levy and sale of property and assets of said estate, to satisfy the same, and unless restrained, said Sheriff will levy said fi. fas. upon property belonging to said estate, and advertise and sell the same, to the great wrong, injury and damage of said estate.

58. That the entry of said illegal assessments by said Tax Receiver upon the Tax Digests of said County, and the issuing of said illegal tax executions thereon, and entering the same upon the tax execution docket by said Tax Collector, constitutes a cloud upon the title of all the property of the estate of your Orator's testator, and the same should be declared illegal and void, and ordered cancelled upon said records.

59. That the levy of said tax executions for said grossly excessive and illegal sums by said Sheriff upon property belonging to said estate of J. B. White will cloud the title, interfere with the due

operation and administration thereof, and cause irreparable loss and damage to said estate, and the levy of said executions by said J. T. Plunkett, Sheriff, as aforesaid, should be temporarily restrained until your Orator can have a hearing upon all the matters hereinbefore set forth in the manner provided by the acts of Congress in such cases.

60. That your Orator is entitled to have said Tax assessments, and the tax executions issued thereon in the manner aforesaid, declared illegal, contrary to law, and void, and that said assessments be cancelled upon the Tax Digest of said County, and that said tax fi. fas. and the entries thereof on the tax execution dockets of said County, be cancelled.

61. All of which actings and doings of the said Defendants, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your Orator. In the premises, in consideration whereof, and for as much as your Orator is remediless [fol. 29] in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable.

Wherefore, waiving discovery, your Orator prays:

1. That a temporary restraining order be granted immediately restraining and enjoining said Defendant, J. T. Plunkett, Sheriff of Richmond County, Georgia, from levying any of said tax executions issued by said Tax Collector, Chas. S. Bohler against your Orator as Executor of the estate of J. B. White, upon any of the property of said estate and from taking any actions thereon until the further order of this Court.

2. That upon a hearing of the matters herein complained of, in the manner provided by the Acts of Congress in such cases, the levy and enforcement of said tax executions against the estate of said J. B. White and the assets thereof, be permanently restrained and enjoined.

3. That said tax assessment made by said Tax Receiver on July 28th, 1919, and recently entered upon the Tax Digests of said Richmond County, Georgia, for the years 1911 to 1917 inclusive, against your Orator as the Executor of the estate of said J. B. White, and the tax executions issued thereon by said Defendant, Chas. S. Bohler, Tax Collector of said Richmond County, Georgia, be declared and decreed by this Honorable Court to be illegal, in violation of law, and that the same be set aside and the entries thereof cancelled upon the tax digests, and the tax execution docket of said Richmond County, Georgia, as clouds upon the title of the property and assets belonging to the estate of your Orator's testator.

4. That the assessment of taxes against the estate of said J. B. White on said unreturned property for the years 1911 to 1917, inclusive, be, by Decree of this Honorable Court, fixed finally and con-

clusively at the amounts respectively ascertained, named and determined in the award of said Board of Arbitrators, on September 2nd, 1919, and that the payment by your Orator of the full amount of [fol. 30] all taxes due on said assessments, including principal and interest, as calculated by said Tax Collector, to September 5th, 1919, namely: the sum of $27,980.88, which said sum was tendered by your Orator to said Tax Collector on said date, shall be in full settlement and satisfaction of all State, County and School taxes due by the estate of said J. B. White for said years.

5. That said Defendant tax officials of said County, their agents and attorneys, be permanently restrained and enjoined from instituting any other proceeding against your orator, or the estate of his testator, on account of or in any manner connected with said alleged taxes for said years.

6. That a Rule Ni Si issue as provided by law, requiring said Defendants, and each of them, to show cause at a time and place to be fixed, why said restraining order and the prayers of this Bill, should not be granted as prayed for, and directing service thereof as provided by law.

7. That your Orator be granted such other relief in the premises against said Defendants, as he may be entitled to, and as to the Court shall seem meet and proper.

8. To the end, therefore, that your Orator may obtain the relief to which he is justly entitled in the premises, he now prays the Court to grant to him due process, by subpœna, directed to the said Defendants, Chas. S. Bohler, Tax Collector, Clifford A. Steed, Tax Receiver, and J. T. Plunkett, Sheriff of said Richmond County, Georgia, hereinbefore named, requiring and commanding each of them to appear herein and answer, but not under oath, the same being expressly waived, the several allegations in this your Orator's Bill contained. And your Orator will ever pray.

Callaway & Howard, By E. H. Callaway, Solicitors for Plaintiff.

[fol. 31] Affidavit of E. H. Callaway to above paper omitted in printing.

[fol. 32] EXHIBIT "A-1" TO COMPLAINT

Tax Execution

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White,

late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as Executor, to be administered, you make by distress and sale thereof, the sum Thirteen thousand five hundred fifty-two Dollar- and 20 Cents, for State, County and School Taxes for the year 1911, with interest from December 20, 1911, and the sum of Fifty Cents costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

EXHIBIT "A-2" TO COMPLAINT

Tax Execution

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as executor, to be administered, you make by distress and sale thereof, the sum Eighteen thousand, eight Hundred and eighty eight Dollars and 68 Cents, for State, County and School Taxes for the year 1912, with interest from December 20, 1912, and the sum of Fifty Cents costs; and you are hereby required to return this writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

[fol. 33] EXHIBIT "A-3" TO COMPLAINT

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway

in his representative capacity as executor of the State of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as executor, to be administered, you make by distress and sale thereof, the sum Twenty two Thousand, Seven Hundred Fifty-one Dollars and 19 Cents, for State, County and School Taxes for the year 1913 with interest from December 20, 1913 and the sum of Fifty Cents costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

EXHIBIT "A-4" TO COMPLAINT

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commended, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as Executor, to be administered, you make by distress and sale thereof, the sum of Twenty one thousand, five hundred twenty seven Dollars and 42 Cents, for State, County and School Taxes for the year 1914, with interest from December 20, 1914 and the sum of Fifty Cents costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

[fol. 34] EXHIBIT "A-5" TO COMPLAINT

Tax Execution

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as executor, to be administered, you make by distress and sale thereof, the sum Twenty one Thousand, Eleven Dollars and 75 Cents, for State, and County and School Taxes for the year 1915, with interest from December 20, 1915, and the sum of Fifty Cents Costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature, this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

EXHIBIT "A-6" TO COMPLAINT

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the goods and chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as executor, to be administered, you make by distress and sale thereof, the sum Twenty two Thousand Three Hundred Forty seven Dollars and 5 Cents, for State and County and School Taxes for the year 1916, with interest from December 20th, 1916, and the sum of Fifty Cents costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law.

Herein fail not.

Given under my Hand and official signature this 9th day of March 1922.

Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

[fol. 35] EXHIBIT "A-7" TO COMPLAINT

STATE OF GEORGIA,
Richmond County:

To all and singular the sheriffs and constables of this State:

You are commanded, That of the Goods and Chattels, if any to be found, otherwise of the lands and tenements of E. H. Callaway in his representative capacity as executor of the Estate of J. B. White, late of said Richmond County, Georgia, deceased, to be made out of the property belonging to the Estate of J. B. White, deceased, in the hands of said E. H. Callaway, as executor, to be administered, you make by distress and sale thereof, the sum Twenty-five Thousand Four Hundred Ninety Dollars and 01 Cent, for State, and County and School Taxes for the year 1917 with interest from December 20, 1917 and the sum of Fifty Cents Costs; and you are hereby required to return this Writ to me, with your actings and doings thereon, and the sums aforesaid, within the time prescribed by law. Herein fail not.

Given under my Hand and official signature this 9th day of March, 1922.
Chas. S. Bohler, Tax Collector of Richmond County, Georgia.

[fol. 36] EXHIBIT "A-8" TO COMPLAINT

Estate of J. B. White

Assessment and Rate

		Tax
Assessment, 1911	$1,000,866.87	$13,552.20
" 1912	1,399,161.67	18,888.68
" 1913	1,558,300.83	22,751.19
" 1914	1,548,735.38	21,527.42
" 1915	1,439,160.83	21,011.75
" 1916	1,509,936.00	22,347.05
" 1917	1,623,567.52	25,490.01

State, County, and School Rates

Tax rate	State	County	School	Total
1911	.50	.46	.39	$1.35
1912	.50	.46	.39	1.35
1913	.50	.57	.39	1.46
1914	.45	.55	.39	1.39
1915	.48	.55	.43	1.46
1916	.50	.55	.43	1.48
1917	.50	.57	.50	1.57

[fol. 37] EXHIBIT "B-1" TO COMPLAINT

This return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1911 is set out in a statement annexed hereto, and was of the market value of $1,003,866.87, and the property of James B. White is hereby assessed for taxes for the year 1911 in the sum of $1,003,866.87. This is entered on the Digest for 1911, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

EXHIBIT "B-2" TO COMPLAINT

This return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1912 is set out in a statement annexed hereto, and was of the market value of $1,399,161.67, and the property of James B. White is hereby assessed for taxes for the year 1912 in the sum of $1,399,161.67. This is entered on the Digest for 1912, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

EXHIBIT "B-3" TO COMPLAINT

This return as made by E. H. Callaway, as Executor of James B. White of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1913 is set out in a statement annexed hereto, and was of the market value of $1,558,300.83 and the property of James B. White is hereby assessed for taxes for year 1913 in the sum of $1,558,300.83. This is entered on the Digest for 1913, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

EXHIBIT "B-4" TO COMPLAINT.

This return as made by E. H. Callaway, as Executor of James B. White of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1914 is set out in a statement annexed hereto, and was of the market value of $1,548,735.38, and the property of James B. White is hereby assessed for taxes for the year 1914, in the sum of $1,548,735.38. This is entered on the Digest for 1914, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

[fol. 38] EXHIBIT "B-5" TO COMPLAINT

This return as made by E. H. Callaway, as Executor of James B. White of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1915 is set out in a statement annexed hereto, and was of the market value of $1,439,160.83, and the property of James B. White is hereby assessed for taxes for the year 1915 in the sum of $1,439,160.83. This is entered on the Digest for 1915, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

EXHIBIT "B-6" TO COMPLAINT

This return as made by E. H. Callaway, as Executor of James B. White of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1916 is set out in a statement annexed hereto, and was of the market value of $1,509,936.00, and the property of James B. White is hereby assessed for taxes for the year 1916 in the sum of $1,509,936. This is entered on the Digest for 1916, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

Exhibit "B-7" to Complaint

This return as made by E. H. Callaway, as Executor of James B. White of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: all the taxable personal property of James B. White, particularly that in hands of Henry Clews & Company. This omitted taxable property in 1917 is set out in a statement annexed hereto, and was of the market value of $1,623,567.52, and the property of James B. White is hereby assessed for taxes for the year 1917 in the sum of $1,623,567.52. This is entered on the Digest for 1917, and the Tax Collector will proceed to collect the same according to law.

July 28, 1919.

C. A. Steed, Tax Receiver, Richmond County, Ga.

[fol. 39]

Exhibit "C" to Complaint

Stock in Foreign Corporations

561 shares Graniteville Mfg. Co.	$44,800.00
35 shares Warren Mfg. Co.	3,150.00
9 41/100 shares Langley Mills, prefd.	470.50
23 shares Langley Mills, common	705.00
	$49,125.50

Choses in

Notes and Loans for 1917:

Sylvester & Son	40,000.00
Graniteville Mfg. Co.	69,000.00
Von Kamp & Gerald	5,000.00
Alexander, Goodwin & Garrett	20,000.00
J. H. Markwalter	7,000.00
Central Trust Company	5,026.69
	$146,026.69

Stocks not Taxed and Deducted

For 1911:

115 shares National Park Bank	[41,400.00]*
100 shares National Bank of Commerce	[20,600.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

For 1912:

115 shares National Park Bank	[41,975.00]*
100 shares National Bank of Commerce	[19,700.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

[*Erased in copy.]

For 1913:

115 shares National Park Bank	[41,860.00]*
100 shares National Bank of Commerce	[19,700.00]*
105 shares Southwestern Rwy. of Ga	10,500.00

For 1914:

115 shares National Park Bank	[45,020.00]*
100 shares National Bank of Commerce	[17,000.00]*
105 shares Southwestern Rwy. of Ga	10,500.00

For 1915:

115 shares National Park Bank	[45,080.00]*
100 shares National Bank of Commerce	[16,700.00]*
105 shares Southwestern Rwy. of Ga	10,500.00

For 1916:

115 shares National Park Bank	[47,725.00]*
100 shares National Bank of Commerce	[18,000.00]*
105 shares Southwestern Rwy. of Ga	10,500.00

For 1917:

115 shares National Park Bank	[80,250.00]*
100 shares National Bank of Commerce	[18,700.00]*
105 shares Southwestern Rwy. of Ga	10,500.00

Loans to be added for 1911, 1912, 1913, 1915, 1916

H. J. Markwalter	$7,000.00
Von Kamp & Gerald	5,000.00
	$12,000.00

[fol. 40] EXHIBIT "D" TO COMPLAINT

In re Estate of J. B. White

Hon. Clifford A. Steed, Tax Receiver of
Richmond County, Augusta, Georgia.

DEAR SIR:

I am writing as the Executor of the Will of J. B. White to notify you that I am dissatisfied with the assessments which you made upon the personal property of the estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, under date of July 28th, 1919, and exercising the privilege given me by law, now within

[*Erased in copy.]

twenty days from receiving the notice from you of said assessments, I hereby request that said assessments be referred to arbitration, as provided by law, and I hereby notify you that the arbitrator chosen and selected by me for such arbitration, is P. E. May.

Please notify me of the name of your arbitrator as soon as practicable.

Very truly yours, (Signed) E. H. Callaway, Executor of the Will of J. B. White.

[fol. 41] EXHIBIT "E" TO COMPLAINT

STATE OF GEORGIA,
County of Richmond:

Whereas a controversy has arisen between the State and County authorities and Judge E. H. Callaway, Executor Estate J. B. White touching the valuation for taxation of Mortgages and foreign stock and bonds, and etc., for the years 1911 to 1917 inclusive,

Now whereas, the said named persons unable to agree as to the valuation of said personal property have selected respectively Thomas S. Gray to be the arbitrator on behalf of the State and County and Percy E. May, on behalf of Judge E. H. Callaway, Executor of the Estate of J. B. White,

Now therefore they the said Thomas S. Gray, and P. E. May, before entering upon the hearing of said question, do swear, that they will faithfully and impartially make a true and just assessment of the tax returns and property in question and will determine the matter submitted according to law and the justice and equity of the case.

Thos. S. Gray, Percy E. May.

Sworn to and Subscribed before me this ninth day of Aug. 1919. C. A. Steed, Receiver of Tax Returns, R. C., Ga.

[fol. 42] EXHIBIT "F" TO COMPLAINT

Arbitration of Taxes of J. B. White

Messrs. Clifford A. Steed, Tax Receiver, and E. H. Callaway, Executor of J. B. White, Augusta, Georgia.

DEAR SIRS:

As arbitrators appointed by you to arbitrate the back taxes upon the estate of J. B. White, we have failed to agree upon the value of the property and have failed to name an umpire, and see no prospect of our agreeing upon either of these matters.

We see no reason to wait longer, and suggest that you take up the matter of having an umpire named in the manner provided by law.

Very truly yours, (Signed) P. E. May, T. S. Gray.

[fol. 43] EXHIBIT "G" TO COMPLAINT

STATE OF GEORGIA,
Richmond County:

The arbitrators in the above case having been unable to agree among themselves touching the controversy above referred to, and having failed to agree upon an umpire in same, in accordance with request made August 22nd, 1919, in pursuance of the provisions of the Acts of 1910 as set forth in Parks' Code, Sec. 1116-d, the Board of Commissioners of Roads and Revenues of Richmond County selected Chas. D. Carr as umpire at a special meeting of said Board held August 25th, 1919.

(Signed) Loyd T. Hall, Clerk Board of Com.

[fol. 44] EXHIBIT "H" TO COMPLAINT

I, Chas. D. Carr, selected as Umpire in the foregoing controversy, do accept the appointment so made, and do swear impartially to determine the matter submitted according to law and the justice and equity of the case, without favor or affection to either of the parties.

Chas D. Carr.

Sworn to and Subscribed before me this 27th day of August, 1919. C. A. Steed, Receiver of Tax Returns, Richmond Co., Ga.

STATE OF GEORGIA,
County of Richmond:

I, Chas. D. Carr, selected as Umpire in the foregoing controversy, do accept the appointment so made and do swear that I will faithfully and impartially make a true and just assessment of the tax returns and property in question and will determine the matter submitted according to law and the justice and equity of the case.

Chas. D. Carr.

Sworn to and Subscribed before me this 2nd day of Sept., 1919. C. A. Steed, Receiver of Tax Returns.

[fol. 45] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed March 23, 1922

The foregoing Bill and Application for a temporary Injunction and a temporary Restraining Order, to remain in force until the hearing of the said Application for a temporary Injunction can be heard and determined, was presented to me on the 22nd day of March, 1922, and having read and considered said Bill,

It is ordered that the same be filed, and that subpœna issue and be served upon the said Defendants as prayed for, and that the application for a hearing for a temporary Injunction is granted, and such hearing is set down for the 10th day of April, 1922, at Augusta, Ga., at 10 o'clock. That immediate notice of said hearing, of not less than five days, shall be given to the Governor and Attorney General of Georgia, and to the Defendants named in said Bill.

I hereby call to my assistance on said hearing for said temporary Injunction, Hons. Alex C. King, Judge U. S. Circuit Court of Appeals, Sam'l H. Sibley, U. S. Dist. Judge, Northern Dist. of Georgia.

It being further shown, and it is my opinion, that irreparable loss and damage will result to Complainant unless a temporary Restraining Order against the levy and enforcement of said tax executions is granted, it is ordered that such temporary Restraining Order is granted, and the Clerk for the Southern District of Georgia is directed to issue a restraining order, as prayed for, restraining said J. T. Plunkett, Sheriff of Richmond County, Georgia, and his Deputies, from levying said tax fi. fas. issued by said Chas. S. Bohler, Tax Collector of Richmond County, on the 9th day of March, 1922, copies of which are set forth as Exhibits "A-1" to "A-7" inclusive to said Bill, and from otherwise enforcing said tax fi. fas. by levy or sale of any property which may have been levied upon, until such time as [fol. 46] the application for temporary Injunction can be heard and determined, and that said temporary Restraining Order to be issued by said Clerk remain in force until the hearing and determination of said application for an interlocutory or temporary Injunction upon notice, as aforesaid.

Done and issued at 12 o'clock, March 22, 1922, at Savannah, Georgia.

(Signed) Beverly D. Evans, U. S. District Judge.

[File endorsement omitted.]

Service of a copy of the above and foregoing order with notice of time and place of hearing of the application for an Interlocutory Injunction is hereby acknowledged and all other and further notice is waived. This 27 March, 1922

(Signed) Thos. W. Hardwick, Governor of Georgia. Geo. M. Napier, Attorney General, State of Georgia. Seward M. Smith, Asst. Atty. General.

It appearing that the original Bill in this case has been lost or mislaid by consent of counsel for all parties, it is hereby ordered that the within copy of the original Bill is hereby established as a true copy and substituted in lieu of the original. This Oct. 20, 1922.

Wm. H. Barrett, U. S. Judge.

Filed Oct. 20th, 1922. C. J. Skinner, Jr., Deputy Clerk.

[fol. 47] IN UNITED STATES DISTRICT COURT

[Title omitted]

WRIT OF INJUNCTION

Whereas, It has been represented to us in our District Court of the United States for the Northeastern Division of the Southern District of Georgia, on the part of E. H. Callaway as Executor of the Will of J. B. White, Complainant, that he has lately exhibited his Bill for temporary Injunction and Temporary Restraining order, in our said District Court for said Division and District, against you the said Defendants above named, to be relieved touching the matters therein complained of; in which Bill it is stated among other things, that you are combining and confederating with other- to injure the said Complainant touching the matters set forth in the said Bill, and your actings and doings in the premises are contrary to equity and good conscience;

We, therefore, in Consideration thereof, and of the particular matters in said Bill set forth do strictly command and strictly enjoin you the said J. T. Plunkett, Sheriff of Richmond County, Georgia, and all other persons whomsoever, and each and every of you under the pains and penalties which may fall upon you and each of you in case of disobedience, that you do absolutely desist and refrain from levying the said Tax Executions issued by Charles S. Bohler, Tax Collector of Richmond County, Georgia, on the 9th day of March, 1922, against E. H. Callaway as Executor of the Estate of J. B. White, late of said County, copies of which Tax Executions are attached as Exhibits marked "A-1" to "A-7" of Complainant's said Bill. And also, from otherwise in any manner enforcing said tax fi. fas. by levy or sale of any property which may have been levied upon, until such time as the application for interlocutory injunction shall be heard and determined.

Witness, the Honorable Beverly D. Evans, Judge of the District Court of the United States for said Division and District, at Augusta in said District, this the 23rd day of March, in the year of our Lord one thousand nine hundred and twenty-two.

L. M. Erwin, Clerk of said Court, By C. J. Skinner, Jr., Deputy. [Seal of the District Court, So. Dis. Georgia.]

[fol. 48] IN UNITED STATES DISTRICT COURT

MARSHAL'S RETURN OF SERVICE ON TEMPORARY RESTRAINING ORDER AND TEMPORARY WRIT OF INJUNCTION—Filed March 24, 1922

(1) Augusta, Georgia, March 24, 1922.

I certify that at Augusta, Richmond County, Georgia, within my district, on March 24, 1922, I executed the within writ upon the

within named J. T. Plunkett, Sheriff of Richmond County, Georgia, by handing to him a copy hereof and at the same time exhibiting to him this original.

The Return of Geo. B. McLeod, United States Marshal, By H. W. Perkins, Deputy.

(2) Augusta, Georgia, March 24, 1922.

I certify that at Augusta, Richmond County, Georgia, within my district, on March 24, 1922, I executed the within writ upon the within named Chas. S. Bohler, Tax Collector of Richmond County, Georgia, and upon Clifford A. Steed, Tax Receiver of Richmond County, Georgia, by handing to each of them a copy hereof and at the same time exhibiting to each of them this original.

The Return of Geo. B. McLeod, United States Marshal, By H. W. Perkins, Deputy.

[fol. 49] [Title omitted]

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS PLAINTIFF'S PETITION—Filed April 10, 1923

And now comes the defendants in the above stated case, and moves this Court to dismiss plaintiff's petition, upon the following grounds:

1. Because its averments do not entitle plaintiff to the injunctive and general equitable relief prayed for.

2. Because plaintiff's petition fails to set out any property of which he is in possession or to which he has title which is clouded or affected by the tax fi. fas. in question. Indeed, plaintiff fails to set out that he is in possession of or has any property that is subject to the said tax fi. fas. which he seeks to enjoin. No property of plaintiff is mentioned. He does not aver that he is in possession of any property. The injury appre-nded, apparently does not exist. Plaintiff is not injured, and is not in a position to raise the questions set up in his petition, as he has no property interest to be protected.

3. Because it appears that neither the State of Georgia nor its officials have deprived, nor are seeking to deprive or deny, plaintiff the equal protection of the law, in that it appears from his petition that plaintiff, a citizen of the State of Georgia, has never appealed to the State for protection—has never sought to follow the remedy prescribed by the State law to meet the conditions set out in his petition, to-wit, the remedy prescribed by the Act of July 31, 1918 (Public Laws, 232). Such act provides the only remedy for de-[fol. 50] faulting taxpayers in the condition of the plaintiff, whose unreturned property has been assessed for unpaid taxes, to dispute the taxability of the property so taxed, in that such taxpayers are

allowed to raise such questions by a petition in equity addressed to the Superior Court of the County of the State where such property was assessed, and it nowhere appears in plaintiff's petition that he has ever sought to avail himself of this remedy.

4. Further, it appears from the petition that plaintiff is a defaulter or delinquent taxpayer, is in laches, and does not come into this court with clean hands, but seeks to raise, by his petition, filed in this court, March, 1922, claims of inequitable discrimination between him and other taxpayers of the State of Georgia which should have been raised upon the return of testator's property for taxation in 1911-1917, and before other State taxpayers had paid their taxes,—upon returns as made by them in 1911 to 1917, and who have, apparently, since been settled with by the State.

5. Because no unusual nor arbitrary penalties are being sought to be enforced against plaintiff by the State, but the apparent effort of the State is to collect the usual and ad valorem taxes on the fair market value of the assessed property of testator, and it is no excuse to plaintiff—Executor—a defaulter—that other taxpayers did or did not return their property at its market value in 1911 to 1917,—especially as it does not appear that the tax-receivers of the State knew of such non-return, or that taxpayers were holding out and not returning property subject to taxation; nor does petitioner show, by his bill, that his testator brought this condition, if it existed, to the attention of the Tax Receivers, in 1911 to 1917, and that such officials refused to assess or tax such property at its true value, when, by the law of Georgia, it was his privilege to have so informed the Tax Receivers.

6. Because it is apparent, from the petition, that there is no unequal, arbitrary nor systematic inequitable discrimination whatever [fol. 51] being urged against plaintiff. That plaintiff's testator, White, was the original defaulter, in 1911-1917, and such was followed by plaintiff, as his Executor, when, being summoned by the Tax Receiver to return the property in question for taxes, in July, 1919, he failed or refused so to do, and property that should have been returned by White, testator, during the years 1911-1917, was then assessed, under the statute aforesaid—(Act 1918, page 232)—by the Tax Receiver of Richmond County, in July, 1919, upon the best information he could obtain as to its value for the years in default, and that plaintiff has not contested nor denied such value, but claims he should not pay taxes upon such property because other State taxpayers, during said years, did not return or did not pay taxes upon the market value of similar property as owned by them, if such was the case, which does not appear. Defendant insists that plaintiff cannot now, in March, 1922, when the presumption of the law is that other taxpayers have been settled with for the year 1911-1917, both inclusive, raise and open questions of inequality of taxation with all other taxpayers throughout the State, when he, plaintiff, and his testator was the cause of the discrimination now complained of, in that he and his testator neglected to return said property, as

required by law, or of bring any question of discrimination or undervaluation of the property of others to the attention of the Tax Receiver; defendant insists that it would be an unlawful discrimination in his, plaintiff's favor to now, in March, 1922, allow such a question to be raised, after the tax-books of the State for the years in question had been closed and the taxpayers settled with and discharged, for if any inequality existed, it was the result of plaintiff's own action in not returning his property at the proper time—so that a proper equalization of taxation could be enforced by the State authorities against all taxpayers throughout the State.

7. Because plaintiff, the Executor of a defaulting taxpayer of Richmond County, presents no equitable reason why this Court [fol. 52] should now enjoin, under the Fourteenth Amendment to the Constitution of the United States, the State of Georgia, its political subdivisions or its officials, from seeking to collect the public revenue due to the State in its governmental capacity by plaintiff's testator, due as far back as 1911-1917, when there is no issue as to the true value of the property assessed by the Tax Receiver, nor of plaintiff's duty to pay the taxes due thereon by testator.

8. Because the court has no jurisdiction to review or to adjudge the validity or invalidity of the arbitration and award proceedings set up and relied upon by plaintiff—Exhibits "A", "B", etc. to petition—to avoid payment of the taxes claimed by the State of Georgia in this case.

9. Because, if this court has jurisdiction for such purpose, it is apparent, that the arbitration and award proceedings set up in the petition—Exhibits "A", "B", etc.—and relied upon by plaintiff as an estoppel against the State as preventing it from collecting the taxes justly due it, are wholly void.

10. Because no such proceeding for tax defaulters of plaintiff's class was authorized by the law of the State at the time it was instituted and insisted upon by plaintiff, to-wit, in July, 1919.

11. Because there was no legal power in the Tax Receiver of Richmond County—Steed—after July 31, 1918, to enter into any arbitration agreement with plaintiff or to appoint an arbitrator, Gray, for such proceeding as was demanded by plaintiff in July, 1919.

12. Because there was no legal power in the Board of Commissioners of Richmond County, Georgia, to appoint an umpire—Carr—for said arbitration, after July 31, 1918, and any such appointment, made in August, 1919, was wholly void. Also, because it does not appear that the agreement to arbitrate for which the Umpire was so appointed, was ever recorded on the minutes of the Board of Commissioners of Richmond County, Georgia, as was required by the [fol. 53] State law to make their action valid.

13. Because, as it is apparent that the State cannot be deprived of its public revenue by the act of any public official—not expressly

authorized by law, and that any agreement to arbitrate by a Tax Receiver with a defaulting taxpayer made or entered into after July 31, 1918, after the passage of said Act of 1918 (Public Laws, 1918, p. 232)—was void, and the State was not bound by any action had thereunder, and could not be bound or deprived of its revenue under an arbitration proceeding such as was authorized prior to July 31, 1918, but which had been expressly or impliedly repealed by the aforesaid Act of July 31, 1918, and a new and fuller remedy provided thereby, for the defaulting taxpayer.

Wherefore, respondents pray that this their motion to dismiss be sustained and said petition dismissed.

George M. Napier, Atty. General; Seward M. Smith, Asst. Atty. General; Pierce Bros., H. L. Franklin, Wm. K. Miller, Attys. for Respondents.

IN THE UNITED STATES DISTRICT COURT

Order Overruling Motion to Dismiss

The foregoing motion to dismiss in the nature of a demurrer having been taken under consideration along with main case and upon a consideration thereof the same is hereby overruled.

This 25th June 1923.

Wm. H Barrett, U. S. Judge.

[File endorsement omitted.]

[Title omitted]

[fol. 54] IN UNITED STATES DISTRICT COURT

RESPONSE—Filed April 10, 1922

Now comes the respondents named in the above stated cause, and the State of Georgia, Richmond County, and the Board of Education of Richmond County, the last named being the beneficiaries of all taxes collected by the Tax Collector of Richmond County, and in response to the rule and to the bill of complaint filed therein, say:

Respondents admit the introductory part of said petition which alleges that,

"E. H. Callaway, a resident and citizen of Richmond County, Georgia, in said Division and District, as Executor of the Will of J. B. White, formerly of Richmond County, Georgia, brings this his Bill against Chas. S. Bohler, a resident and citizen of Richmond County, Georgia, Clifford A. Steed, a resident and citizen of Richmond County, Georgia, and J. T. Plunkett, a resident and citizen

of Richmond County, Georgia, and all of said defendants being residents of said Division and District, and thereupon your Orator complains and says,"

except they deny that portion thereof which alleges, "J. B. White, formerly of Richmond County, Georgia," and say with reference thereto that the said White was for a long number of years prior to and up to his death domiciled in Richmond County, Georgia, and was so domiciled at the time of his death.

1. Respondents admit paragraph one of said petition which alleges as follows:

"That your Orator is the duly appointed and qualified Executor of the Will of J. B. White, formerly of Richmond County, Georgia, [fol. 55] and as such has been in possession of, and administering the Estate of said J. B. White, and is still acting as Executor of said Will,"

except they deny that J. B. White was "formerly of Richmond County, Georgia," and say with reference thereto that he was at the time of his death domiciled in Richmond County, and in which said County all of his personal property had its situs for the purpose of taxation.

2. Respondents admit paragraph two of said petition which alleges as follows,

"That said Defendant, Chas. S. Bohler, is the duly elected, qualified and acting Tax Collector of said Richmond County, Georgia, whose duty it is under the laws of said State to collect the State and County taxes levied and assessed in said County and who is authorized by law to issue tax executions for such taxes; that said Defendant, Clifford A. Steed, is the duly elected, qualified and acting Tax Receiver of said County, whose duty it is to receive tax returns, make assessments, and to enter the final assessments upon the Tax Digest of said County, and said Defendant, J. T. Plunkett, is the duly elected, qualified and acting Sheriff of the County of Richmond, State of Georgia, and one of his duties is to levy tax executions issued and delivered to him by said Tax Collector."

3. Respondents admit so much of paragraph three of said petition which alleges, "That the amount or sum in controversy herein, exceeds the sum of $3,000, as will hereinafter more fully appear," but they deny the balance thereof, which alleges, "and the matters herein referred to and the questions herein presented, arise under the Constitution of the United States and under the Acts of Congress."

4. Respondents admit paragraph four of said petition which alleges as follows,

"That on the 9th day of March, 1922, the said Defendants, Chas. S. Bohler, as Tax Collector of said Richmond County, issued seven

(7) separate tax fi. fas. against your Orator in his representative capacity as Executor of the Estate of J. B. White for what he pretended and claimed to be back taxes against said estate for State, County and School taxes, for the years 1911 to 1917 inclusive, said fi. fas. being for principal amounts as follows: For 1911, $13,552.20; for 1912, $18,888.68; for 1913, $22,751.19; for 1914, $31,527.42; for 1915, $21,011.75; for 1916, $22,347.05, and for 1917, $25,490.01, each of said fi. fas. bearing interest at the legal rate of 7% from December 20th of the year for which it was issued,—the aggregate amount of the principal of said tax fi. fas. being $145,568.30, and the accrued interets thereon being $70,764.01, or a total of $216,332.31 copies of said fi. fas. together with a statement of the alleged assessments upon which said fi. fas. were issued, and the tax rates for the several years as furnished by said Tax Collector to your Orator, being hereunto attached and marked Exhibits "A-1," "A-2," "A-3," "A-4," "A-5," "A-6," "A-7," and "A-8," reference to which is hereby made as often as may be necessary,"

[fol. 56] except the words "pretended and claimed" in the fifth line thereof, and aver that said tax executions for the years in question are bona fide, valid and proper executions for taxes justly due by said Orator in his representative capacity as Executor of the Estate of J. B. White for the years 1911 to 1917 inclusive upon the taxable property which had never been returned for taxation by J. B. White during his life, nor by the said E. H. Callaway as Executor, although such return should have been made and said taxes were justly due the State of Georgia and Richmond County, and the Board of Education of Richmond County for said years.

5. Respondents admit paragraph five of said petition which avers as follows,

"That said Chas. S. Bohler, Tax Collector as aforesaid, has entered said executions upon the execution docket and has delivered the same to said J. T. Plunkett, Sheriff of said County, with instructions to levy the same upon the assets and property belonging to the estate of your Orator's testator for the purpose of selling the same and enforcing collection of said fi. fas."

6. Respondents deny paragraph six of said petition which alleges as follows:

"Your Orator alleges that each and all of said tax fi. fas. are illegal, contrary to law and are void for the reasons hereinafter set forth, and should be cancelled, set aside and the entry thereof on the execution dockets of said Richmond County cancelled, as a cloud upon the title to the property belonging to the estate of said J. B. White."

7. Respondents deny paragraph seven of said petition which alleges as follows,

"That your Orator's testator, J. B. White, as your Orator is informed, was not a citizen of the United States, but a native of Ire-

land, and though he resided in Richmond County, Georgia, from 1866 to August 1909, he never became a naturalized citizen of the United States, and in the Summer of 1909 he left the State of Georgia, and the United States, and returned to Europe, and remained in Europe, without returning to the United States, until his death at Genoa, Italy, on March 31st, 1917; that whether said J. B. White left the City of Augusta and the United States with the intention of returning or not returning, your Orator does not know, but he alleges upon information and belief, that within a couple of years after leaving the United States, he had permanently abandoned all idea of ever returning to the United States and that during said entire period from 1911 to 1917, inclusive, he was a non-resident alien of the United States."

[fol. 57] Responding further to paragraph seven, respondents say, that James Brice White was not an alien as alleged, but was a citizen, resident and domiciled in Richmond County, Georgia, and that the said Executor is concluded by the acts of his testator, and by his own acts as Executor, from now contending that said White was not a resident of and domiciled in Richmond County, Georgia, at the time of his death, where he had been for over forty years prior thereto, and subject to taxation therein.

That Testator, James Brice White, came to Augusta, Georgia, in 1866, when about eighteen years of age, accepted employment therein, and became domiciled in and a resident of Richmond County, Georgia, engaged in business therein, and for many years maintained his home at what is known as the "Dye Place" in Richmond County, near Augusta, Georgia.

That from time to time said White made conveyances of property under the law, in which he described himself as "of Richmond County, Georgia"; that on the 23rd day of February, 1916, a year or so before his death, he made a contract of lease to the Dreamland Theater, in Augusta, Georgia, of record in the Clerk's Office, of the Superior Court of Richmond County, Georgia, Book 8 L's, page 29, wherein he described himself as follows:

"This contract of lease, entered into this 23rd day of February, 1916, between James Brice White, of Richmond County, Georgia, party of the first part, and the Dreamland Theater," etc.

Again in a power of attorney, executed on the 8th day of June, 1915, recorded in the office of the Clerk of the Superior Court of Richmond County, Georgia, in Book 8 G's, page 487, White described himself as follows:

"I, the undersigned, James Brice White, of Augusta, Richmond County, Georgia, United States of America, being temporarily absent from my home, and at present in Europe, and for the purpose of facilitating the execution of lease and rental contracts pertaining to my real estate in Augusta, County of Richmond," etc.

[fol. 58] Again, in a bond for title, executed February 17, 1916, recorded in Book 8 K's, page 573, he described himself as follows:

"This agreement and bond for title, made this 17th day of February, 1916, between James Brice White, resident of Richmond County, Georgia, now sojourning in Florence," etc.

Again, In an instrument executed on the 18th day of February, 1916, recorded in Book 8 K's, 573, in Richmond County, White described himself as follows:

"STATE OF GEORGIA,
Richmond County:

This indenture, Made this 18th day of February, 1916, between James Brice White, of said county and state, temp-rarily residing abroad," etc.

Again, On February 17, 1916, James Brice White sold to John Sylvester and others property on Broad Street, Augusta, Georgia, valued at $100,000.00, and in making the conveyances described himself therein as follows:

"James Brice White a resident of Richmond County, State of Georgia, now sojourning at Florence, in the Kingdom of Italy," etc., deed recorded in Book 8 K's, page 592, in Richmond County.

Again, In agreeing on a property line with Kahr and others, February 18, 1916, recorded 8 K's, 572, White described himself as follows, in an instrument headed "State of Georgia, Richmond County:"

"James Brice White, of said State and County, temp-rarily residing abroad."

Again, In an agreement with Kress & Company, as to valuable property on Broad Street, in Augusta, Georgia, June 15, 1912, recorded 7 Q's, 171, White described himself as follows:

"James B. White of Richmond County, temporarily traveling in Europe."

Again, In an agreement with Kress & Company, recorded in Book 7 K's, page 15, he described himself as:

"James B. White, of Richmond County, Georgia, temporarily in England."

[fol. 59] Again, In a conveyance headed "State of Georgia, Richmond County" in 1904, recorded 7 A's, page 549, he described himself, as:

"James B. White, of said State and County."

That while abroad in Europe, White constantly travelled from place to place, and finally died in Genoa, Italy, March 31, 1917, and in his Will, which was probated as a domestic Will, by E. H.

Callaway, the nominated Executor therein, in the Court of Ordinary of Richmond County, Georgia, White described himself as follows:

"I, James Brice White of "The Dye Place," in or near the City of Augusta in the State of Georgia, United States of America, while temporarily a resident in the Hotel Metripole, London, England, do," etc.

This Will was duly probated in both common and solemn form in Richmond County, Georgia, by E. H. Callaway, Executor of said James B. White, from which probate the following evidence presented by said Callaway, Executor, appears.

Thus, in the proceeding to probate said will, in common form, a subscribing witness, Arthur W. Steed, swore to the Will in London as that of James Brice White, late of said County of Richmond, State of Georgia, in the United States of America. A report was made from Genoa, Italy by the American Consul to the Secretary of State at Washington, regarding the death of said White, as an American citizen. This report states that James Brice White died in the Protestant Hospital in Genoa, on March 31, 1917, and says: "Mr. White was naturalized as an American Citizen before the Circuit Court of Augusta, Georgia, in 1870," and at the request of his brother, Mr. J. C. White, of Belfast, Ireland, there is attached an extra copy of this report for the Executor, Callaway, and was used and presented by Callaway, Executor in said Court proceedings. This report also contains a list of the next of kin, etc. The petition for probate of this Will in common form by Callaway, Executor, is headed "State of Georgia, Richmond County," and avers by Callaway, Executor, "That James Brice White, late of said County, died testate on 31st day of March, 1917, while temporarily residing in Genoa, Italy." Order of probate was granted in common form reciting the Will to be that of James Brice White, late of Said Richmond [fol. 60] County, deceased, and the Executor made the affidavit as usual thereunder.

Again, In the proceeding by Callaway, as Executor, to probate this same Will in solemn form, conducted in the Court of Ordinary of Richmond County, upon the Petition of the said Callaway, Executor, headed "Richmond County, Georgia," he alleged that James B. White, late of said County, died testate, etc., and that sundry parties were his heirs at law, citation or notice and process issued to them, relative to the probating said document as the last Will and Testament of James Brice White, late of said County, requiring the heirs to show cause therein In October, 1917, the heirs of James B. White accepted service on this citation and, among other things, said as follows:

"The undersigned, Miss Grace White, Mrs. Bessie Skinner, Miss Margaret White, all of Bedford, England, and Robert White, of Chadmead, Earlsford Road, Hythe Kent, England, and John Campbell White, of the City of Belfast, Ireland, constituting all of the heirs at law of James Brice White, late of the City of Augusta, Richmond County, Georgia, United States of America, do hereby acknowl-

edge service of the above and foregoing petition, order and citation issuing from the Court of Ordinary of Richmond County, Georgia, for the probate in solemn form of the Will of said James Brice White, and do hereby waive service," etc.

Further, the parties consented upon the coming in of testimony of the subscribing witness to the Will—that said Will be admitted to record in solemn form. Accordingly, on November 26, 1917, the Will was duly probated in solemn form as a domestic Will in the Court of Ordinary, Richmond County, Georgia, and an order to that effect passed, and the previous order directing letters testamentary to issue to Callaway, Executor, when the Will was admitted to probate in common form, was ratified and confirmed.

It thus appears from the record of the probate of the Will of James Brice White in both common and solemn form—as conducted by his Executor, said Callaway—that James Brice White lived, resided, was naturalized and was domiciled in Richmond County, Georgia; [fol. 61] did business and had large property therein at the time of his death and for many years prior thereto. That wherever he may have been born, he had removed to this county and establishing herein a residence, domicile, and citizenship for himself—and that this was known to his family and all his heirs at law, and that they all state that he was of the City of Augusta, Richmond County, Georgia, as does his Executor in said probate proceedings—an exemplified copy of which is herewith presented to the Court, and if necessary, Plaintiffs pray leave to attach a copy hereto as an exhibit. That this statement by White himself, as to his residence and domicile, and by his heirs at law, and by his Executor, Callaway, is conclusive against all parties at interest, in this case, as to the taxability of the property in question and said Executor is estopped from claiming the contrary.

Again, The said E. H. Callaway, as Executor of the Will of James Brice White, late of said County, presented his Petition to A. R. Walton, Ordinary of Richmond County, Georgia, to have him assess the inheritance tax due the State of Georgia by said estate, alleging that White died in March, 1917, and that under the Act relative to inheritance taxes due the State it was important that the amount be fixed before March, 1918; that the inheritance tax due by White's estate to the United States Government under a tentative return already filed by the Executor amounted to $257,035.64, and that the parties at interest consented that the Ordinary make the assessment for the State inheritance tax. The Ordinary acted at the March Term, 1918. The Judgment is headed, "State of Georgia, Richmond County" and states, "In the matter of the application of E. H. Callaway, Executor of the Will of James B. White, late of said County, deceased, to assess the inheritance tax," etc., that amount was fixed at $60,335.12, and Callaway, Executor, was directed to pay this amount to the Tax Collector of Richmond County, Georgia. The estate was found at the death of Testator to be of the value of $3,107,230.64. This was in line with an inventory of the estate filed by Callaway, Executor, wherein the value was fixed at $3,078,748; and includes many of the securities now sought to be taxed—ad valorem—a copy

of which is herewith presented, and, if necessary, Plaintiffs pray [fol. 62] leave to attach the same as an exhibit and a part hereof.

Further, in the administration of said estate by said Callaway, Executor, he made the oath to said inventory of said estate, showing assets aggregating $3,000,000., among which are the securities sought to be taxed ad valorem, and upon which he has paid the inheritance tax to the United States and to the State of Georgia, but now declines to pay the ad valorem tax to the State, therefore said Executor is estopped from now claiming to the contrary.

8. Respondents deny paragraph eight of said petition which alleges as follows,

"That prior to the time said J. B. White left the United States in the Summer of 1909, all of his real estate holdings, which amounted to nearly a million dollars, and as far as your Orator knows, his personal property and securities liable for taxation, were duly returned and assessed for taxation, and all taxes thereon paid, said White being the largest individual taxpayer in the City of Augusta and in said Richmond County, and one of the largest in the State."

9. Respondents deny paragraph nine of said petition which alleges as follows,

"Your Orator alleges, upon information and belief, that none of the securities which are sought to be taxed by the assessments upon which said executions have issued except the local securities for the year 1917, were ever in the physical possession of said J. B. White, nor did the stocks in corporations stand in his name. That said securities, including both stocks and bonds, were brought by Henry Clews & Co., a brokerage or commission firm, of New York, on what is known as margins, the said Clews & Company taking the title to said stocks in their own name and retaining the possession of such bonds as were purchased, and charging the balance of the purchase price against said securities, which said balance was subsequently, from time to time, paid off and discharged by the proceeds of sales of real estate belonging to said J. B. White in the City of Augusta, and from rents collected from said real estate, as well as from the income of said securities."

Further answering said paragraph respondents say, that whether said securities referred to therein were bought by Henry Clews & Company or not, is not important because the said J. B. White was the real, actual and beneficial owner thereof; that Henry Clews & Company were simply his agents and Bankers in New York to carry out his instructions; and they were in possession of a large sum of money furnished them by White for the purpose with which they bought and traded in securities for his account; that their possession [fol. 63] of the securities was White's possession; they belonged to White as testified to by J. B. Clews, one of the members of said firm, which said evidence is herewith presented to the Court in this behalf, and which was presented to C. A. Steed, Tax Receiver, when he

made the assessments complained of; and White's ownership thereof did not change by reason of any indebtedness he might have owed said Clews & Company, nor did Clews & Company ever so claim, but recognized White's ownership and so accounted to plaintiff by his Executor and plaintiff continued Clews & Company as his, plaintiff's agents in New York. The legal situs of all such personalty was attached to White; it was intangible property and was taxable at the domicile of said White, which domicile was as stated by White himself, to be Richmond County, Georgia, as set out in paragraph seven supra, in which County White was domiciled, lived and did business from 1866 down to the date of his death in March, 1917. In going to Europe White did not change his domicile, did not intend to do so, as he says himself in the documents referred to in paragraph seven, and his Executor, E. H. Callaway cannot now, after the death of White in an effort to escape ad valorem taxation seek to change the domicile of White from what White himself said, as stated, and from what Callaway himself represented it to be in the Court of Ordinary of Richmond County, Georgia, when he probated the said Will of White and alleged said White's domicile to be in Richmond County, Georgia. Respondents specially call the attention of the Court to the fact that said White while in Italy shortly before he died, February 18, 1916, described himself as of Richmond County, Georgia, temporarily residing abroad, and again on February 17, as now sojourning in Florence the Kingdom of Italy in which Kingdom he died. Respondents say Callaway, as Executor claims no other domicile and in trying to raise one in Ireland fails to expressly so aver; fails to show any suggestion as such, except in regard to the taxes in question, and there is no allegation that said White ever paid taxes to the British Government, which respondents aver said White never did.

[fol. 64] 10. Respondents deny paragraph ten of said petition which alleges as follows:

"That the local agents which your Orator's testator left in charge of his real estate and other property located in the City of Augusta when he left the United States in the Summer of 1909, returned said property each year for taxation at its assessed value and duly paid all of the taxes exacted or required thereon."

Answering said paragraph further respondents say, that none of said property, which was assessed by the tax receiver and upon which assessments the executions sought to be cancelled were issued, was ever returned for taxation in Richmond County, Georgia, either by the said J. B. White or any agent of his for the years in question, but that all during said years, said J. B. White was a tax defaulter, so far as said property was concerned.

11. Respondents deny as alleged in paragraph eleven, "That after your Orator qualified as Executor of the Will of said J. B. White, upon inquiry he ascertained that the said Henry Clews & Company, held in their own name and in their own possession various and

sundry securities of the approximate value of $1,000,000, or more," but they admit that said securities as alleged, "belonged to the Estate of said J. B. White," but deny the allegation in said paragraph which alleges, "and thereupon your Orator, without having the title or actual physical possession of said securities transferred from the said Henry Clews & Co., to your Orator as Executor, left the same with the said Henry Clews & Co., as the agent of your Orator as such Executor." Respondents say and admit that said Executor received and "listed said securities in the inventory of said estate which he filed in the Court of Ordinary of Richmond County, Georgia, and gave the values of said securities as of the date of the death of your Orator's testator, March 31st, 1917," and respondents aver that said Executor was legally possessed of said securities and administered and controlled the same, and has since conveyed them to the legatees under the Will of White, and that the values so given by him are the approximate values of said securities during the years 1911 to 1917, inclusive, which said inventory, to which [fol. 65] said Executor made oath, your respondents herewith presents the same to the Court, and, if necessary pray leave to attach the same as an exhibit.

12. Respondents can neither admit nor deny paragraph twelve of said petition which alleges as follows:

"That all of said securities of said alleged valuation, together with notes and other choses in action and other local securities amounting to a much larger sum, in the aggregate, than the securities covered by the assessment upon which said tax executions as aforesaid have issued against your Orator as Executor as aforesaid, for State and County taxation in said Richmond County, for the year 1918, and the Board of Assessors appointed, qualified and acting under the Tax Equalizing Act of 1913 for the County of Richmond and State of Georgia, assessed all of the securities, notes and money belonging to said estate, including all the securities covered by the assessments, upon which said tax fi. fas. are issued, at the sum of $250,000 for taxation for said year, and your Orator duly paid the taxes on said securities for the year 1918 to the State, County and other taxing authorities authorized by law to collect taxes."

Further answering said paragraph respondents say, that whatever action the Board of Assessors took under the Act of 1913 was erroneous and the same can have no bearing upon the issues now involved, for the Supreme Court of Georgia in a litigation wherein your Orator was one of the defendants has decided that the "Tax Equalization Act of 1913" has no application to any previous years but only has reference to the current years where taxpayers have duly returned their property as required by law, and cannot be urged by Orator as a reason why the property in question which has been assessed for the years in question was of a less value than that placed thereon by the tax receiver in said assessments.

13. Respondents deny paragraph thirteen of said petition which alleges as follows:

"That thereafter, when the Tax Receiver of said Richmond County, to-wit: Clifford A. Steed, obtained a list of the securities held by said Henry Clews & Co. of New York, and standing in their name, from the inventory which your Orator, as Executor, had filed in the Court of Ordinary of said Richmond County, Georgia, and called upon your Orator, by notice as provided by the Statute Law of the State, set forth in Parks' Political Code of Georgia, Sec. 1057, to make returns of said securities for taxation under the provisions of the Acts of the General Assembly of Georgia in such cases provided, your Orator contended with the said Tax Receiver that said securities were not taxable for the reason, among others, that neither [fol. 66] the title nor actual possession of said securities had ever been in your Orator's testator, the said J. B. White, and that the title, as well as the possession of all of said securities, had been held continuously since they were acquired, by the said Henry Clews & Co. of New York, and that during all of the years from 1911 to 1917, inclusive, your Orator's testator, the said J. B. White, had been a non-resident alien of the United States, and said securities, being personal property, were not liable or subject to taxation by the State of Georgia and County of Richmond, and your Orator thereupon, under protest, filed returns with said Clifford A. Steed, Tax Receiver of said County, for each of the years from 1911 to 1917 inclusive, for such personal property only as your Orator had knowledge of that his said Testator had owned during each of said years, accompanying the same with a written protest."

Responding further to said paragraph respondents say, that it is immaterial what were the contentions of plaintiff before the tax receiver, as the tax receiver was satisfied from the evidence produced to him that J. B. White was a domiciled resident of Richmond County, Georgia, and owned said securities in possession of said Executor and his agent, Clews & Company, and that said securities were taxable in Richmond County, Georgia, and for that reason he proceeded to assess the value thereof from information furnished him, and respondents specially deny that all of said securities stood in the name of Henry Clews & Company, who were simply the agents of White—their possession was for White. Respondents deny that White was a non-resident alien of the United States and deny that said property was not taxable in Richmond County, Georgia, the domicile of White.

14. Respondents admit the assessment set out in paragraph fourteen of said petition which alleges as follows:

"That thereupon, the said Clifford A. Steed, Tax Receiver of said County, rejected said Returns so filed by your Orator, claiming to be acting in pursuance of Sections 1097, 1098 and 1116-d of Parks' Political Code of Georgia, the last named Section being a codification of the Act of the General Assembly of Georgia approved August 13th, 1910, and proceeded to issue assessments against your Orator as Executor of said J. B. White for each of the years from 1911 to 1917, inclusive—copies of said assessments so made by said Tax

Receiver being hereunto attached marked Exhibit- "B-1," "B-2," "B-3," "B-4," "B-5," "B-6," and "B-7," to which the usual leave of reference is prayed as often as may be necessary."

but deny that said assessment was made under Code Sections 1097, 1098 and 1116-d, but say it was made under the only valid law in existence on said subject at that time, the Act of July 31, 1918, page 232.

[fol. 67] 15. Respondents admit paragraph fifteen of said petition, except as stated, which alleges as follows:

"That at the time of making said assessments, the said Tax Receiver furnished to your Orator as the basis of information upon which he had made said assessments, an alleged or pretended valuation of the securities which had been held during said years by the said Henry Clews & Co., for account of said White, as follows:

For 1911	$1,012,366.67
" 1912	1,397,671.67
" 1913	1,344,405.83
" 1914	1,556,915.83
" 1915	1,443,500.83
" 1916	1,508,436.00
" 1917	1,375,408.90

and for what was known as local securities and notes included in said assessment, said Tax Receiver furnished to your Orator as information, a typewritten sheet pretending to set forth the valuations thereof, and under the heading 'Stocks not Taxed and Deducted,' was listed shares of stock in National Banks located in the City of New York, State of New York, the alleged values of which had been included in the above set forth valuations for each of said years, and though the list indicates that the alleged valuations of said stocks in said National Banks were to be deducted, they were crossed out and not deducted as appears from a copy thereof hereunto attached marked Exhibit 'C.'"

Respondents answering said paragraph further say, that they admit all of said paragraph except the words "they were crossed out and not deducted as appears from a copy thereof hereunto attached marked Exhibit "C," and also say that if any error of addition was made in the calculation of the amount of taxes due as set out therein, then of course such correction will be duly made by respondents, but respondents say that such error of addition can in no manner invalidate the assessments made as a whole.

16. Respondents deny paragraph sixteen of said petition which alleges as follows:

"That said action and conduct of said Tax Receiver in making said assessments against the estate of your Orator's testator, was expressly claimed to be in pursuance of the Act of the General Assembly of

Georgia of 1910, codified in Parks' Political Code of Georgia, Sec. 1116-d, under which said tax receiver claims to be acting, with the approval and under the direction of the Comptroller General of the State of Georgia, who, under the laws of said State, has charge of the matters of taxation in said State, which said Act expressly provides that the taxpayer so notified in writing of such assessments should have the privilege, within twenty days after receiving such notice, of referring the question of the true value to arbitrators, one to be [fol. 68] chosen by himself and one to be chosen by the Tax Receiver, with power to choose an umpire in case of disagreement, and that their award should be final."

Respondents deny that said assessments were made under Act of 1910 but say they were made under the Act of July 31, 1918, page 232, which was the only law in existence at that time, authorizing the same as it related to plaintiff. The legislature of the State of Georgia passed, on July 31, 1918, a new law which changed the remedy for tax defaulters in lieu of arbitration, and provided that if a delinquent taxpayer desired to raise the issues of excessiveness or that said property was not subject to taxation for any reason, he must apply to a court of equity in the County where said property had been assessed, and which he has never done.

17. Respondents deny the allegation of paragraph seventeen, as follows: "That your Orator, notwithstanding his belief that said securities so held by said Henry Clews & Co., because of the non-residence and alien citizenship of his testator during the years from 1911 to 1917, the date of his death, inclusive, were not taxable by the State of Georgia or County of Richmond, or any other sub-division or governmental agency thereof, with and for the purpose of speedily winding up said estate and adjusting said matter, determined to submit to the tax assessment system of the State of Georgia as adopted by the legislative branch thereof, and to have the values of said securities for the purpose of taxation, fixed by arbitration in the manner provided by law, and as set forth in the Sections of the Civil Code hereinbefore referred to, and thereupon your Orator, after receiving the notice of said assessments from the said Clifford A. Steed, dated July 28th, 1919, on the 7th day of August, 1919, (said Orator) notified the said Clifford A. Steed, Tax Receiver of Richmond County, as expressly provided in said Tax Act of 1910, in writing, that your Orator was dissatisfied with the assessments which he had made upon the personal property of said White for the years from 1911 to 1917 inclusive, under date of July 28th, 1919, and (claiming to be) exercising the privilege given to your Orator by said Act, within twenty [fol. 69] days after receiving from said Tax Receiver notice of said assessments, requested the assessments to be referred to arbitration, (claiming the same to be) as provided by law, and stated therein that your Orator had chosen and selected for said arbitration, P. E. May, and requested the said Receiver to notify your Orator the name of his arbitrator as soon as practicable,—a copy of said written notice being hereunto attached marked Exhibit 'D,' to which the usual leave of reference is prayed."

Respondents deny that plaintiff believed in the non-residence and alienage of J. B. White, because he, plaintiff, alleged to the contrary in the Court of Ordinary when he probated the Will of said White and paid State and Federal inheritance taxes on said securities.

18. Respondents admit paragraph eighteen of said petition which alleges as follows, except the words "on behalf of said State and County":

"That thereafter, on the 9th day of August, 1919, the said Clifford A. Steed, Tax Receiver of said County, notified your Orator that he had appointed Thomas S. Gray as Arbitrator to represent him on behalf of said State and County as Tax Receiver, and furnished to your Orator a copy of the oath of submission which he had prepared and had said Thomas S. Gray and Percy E. May to subscribe and swear to,—a copy of which is hereunto attached marked Exhibit 'E.'"

Respondents deny that the State and County were parties to said proceeding.

19. Respondents admit paragraph nineteen of said petition so far as it alleges facts, but deny the legal conclusions in that any law applicable to this case authorized said County Commissioners to appoint Carr as umpire, which said paragraph is as follows:

"That acting in pursuance of said Act of the Legislature, said Thos. S. Gray and P. E. May being unable to agree either upon the value of the property assessed, or to name an umpire, set forth that fact in writing to the said Tax Receiver, and to your Orator under date of August 22nd, 1919, copy of which is hereunto attached marked Exhibit 'E,' and thereupon your Orator and the said Clifford A. Steed, Tax Receiver, joined in a request to the Board of Commissioners of Roads and Revenues of said Richmond County, as provided in said Act, for the appointment of an umpire by said Board, and said Board, on the 25th day of August, 1919, designated as such umpire, Chas. D. Carr, a citizen of said Richmond County, as appears in Exhibit 'G' hereunto attached, to which the usual leave of reference is prayed."

[fol. 70] 20. Respondents admit paragraph twenty of said petition which alleges as follows:

"Thereafter, on the 27th day of August, 1919, the said Chas. D. Carr, so selected as umpire in said tax arbitration, subscribed to an oath as prepared and submitted to him, before the said C. A. Steed, Tax Receiver of Richmond County, and subsequently, on September 2nd, 1919, subscribed to another oath, to conform to the oath which had been taken by the other arbitrators,—copies of said two oaths being hereunto attached marked Exhibit 'H.'"

21. Respondents emphatically deny paragraph twenty-one of said petition which alleges as follows:

"That as soon as said Umpire had been appointed, Thos. S. Gray, the arbitrator selected by said Tax Receiver, left the City of Augusta and State of Georgia and persistently refused to return for the purpose of holding said arbitration, but was finally induced to return on the evening of Sept. 1st, 1919, upon a notice from said Umpire that the meeting of the arbitrators for the purpose of fixing the value of said properties for taxation, would be held on Tuesday, September 2nd, 1919."

Further answering said paragraph, respondents say, that the same is without foundation in fact.

22. Respondents deny paragraph twenty-two of said petition as made,—deny Steed acted solely under the Act of 1910 as stated, but otherwise admit the facts alleged in said paragraph, which is as follows:

"That in all matters connected with the selection and organization of said Board of Arbitration, the said Clifford A. Steed, Tax Receiver of said County, was acting under the provisions of the Act of 1910, as set forth in Civil Code Sec. 1116-d, cited above; but notwithstanding said acts and conduct on the part of said tax receiver, on the morning of September 2nd, 1919, the date which had been fixed, by agreement of all three of said arbitrators, for the *y*earing of said matter, counsel representing the State of Georgia and the County of Richmond, and who had represented said Tax Receiver in the designation of said arbitrator, presented an equitable petition to the Judge of the Superior Court of Richmond County, seeking to enjoin the holding of said arbitration, and denying that your Orator was entitled to an arbitration upon various grounds, among others, that said Board of arbitrators was illegally organized, and that the assessment and arbitration was called into existence under the Act of 1910 as codified in Parks' Code Sec. 1116-d, and that the Tax Receiver had administered the oath to said arbitrators which was prescribed by the Equalization Act of 1913, without conferring with counsel representing him, or the State, and further charging that the Board did not act within twenty days from August 8th, 1918, the date of the appointment of the arbitrator by the Tax Receiver, and that the time for the arbitration had passed, and that it was the duty of the taxpayer to see that the arbitration had been held within twenty days from the date of the appointment, notwithstanding the fact that it was the arbitrator who had been appointd by the Tax Receiver to [fol. 71] represent the County and State who left the County and State immediately after the appointment of the Umpire on August 25th, 1919, and did not return to the State until the first day of September, 1919, and further, upon the ground that both the arbitrator selected by your Orator, as well as the Umpire selected, were disqualified by reason of the fact that they were clients of the law firm of which your Orator was a member."

Responding further to said paragraph, respondents say that whatever laws the said C. A. Stead may have claimed to be acting under

he had no authority to submit the question of assessments upon the property in question to a Court of arbitration, and therefore could not by an agreement, submit the same to such a court, confer upon it jurisdiction of a subject matter over which it had none, under the express provisions under the statutes of said State of Georgia, under the Act of 1918, page 232, and therefore said arbitration proceedings were utterly void and no award rendered by them was binding.

Respondents say further, that the taxing authorities of said State are not estopped from raising question of jurisdiction of said court of arbitration.

23. Respondents admit paragraph twenty-three of said petition which alleges as follows,

"That the Judge of the Superior Court of Richmond County, upon the presentation of said petition for injunction, signed an order refusing the injunction prayed for, and counsel representing the State of Georgia thereupon filed exceptions to said decision refusing said injunction, and carried the same to the Supreme Court of Georgia, where the decision refusing the injunction was affirmed by the Supreme Court of Georgia in a unanimous decision rendered May 14th, 1920, which appears in 150th Georgia Reports, page 235."

24. Respondents deny paragraph twenty-five of said petition as alleged which alleges as follows,

"That upon the refusal of said injunction by the Judge of the Superior Court of said County, the arbitrators selected in the manner hereinbefore stated, in pursuance of said Act of 1910, convened and organized, and counsel representing the Receiver and the State of Georgia appeared before said Board and submitted evidence, and after hearing evidence and argument from counsel representing the State of Georgia and County of Richmond, and the Tax Receiver, and the evidence and argument submitted by your Orator, said Board of Arbitrators rendered the following award:

'STATE OF GEORGIA,
Richmond County:

Sept. 2nd, 1919.

The Arbitrators and the Umpire selected as aforesaid having this [fol. 72] day had under consideration the valuation of the personal property of the Estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, for taxation upon consideration thereof have fixed said valuation at:

For year	1911	$112,744.83
" "	1912	154,550.67
" "	1913	187,927.98
" "	1914	194,138.96
" "	1915	190,202.74
" "	1916	301,183.67
" "	1917	360,813.92

In witness of which they have hereunto set their hands and affixed their seals, this the day and year above written.

(Signed) Thos. S. Gray, Arbitrator. P. E. May, Arbitrator. Chas. D. Carr, Umpire'."

"That said award was delivered by said Arbitrators to said Clifford A. Steed, Tax Receiver of said County, as required by law, and said award was, in pursuance of the law in such cases made and provided, on September 5th. 1919, entered upon the Tax Digests of said County for the respective years covered thereby."

Responding further to said paragraph, respondents say that before entering upon the arbitration above mentioned, counsel for the State and County stated to the arbitrators that they did not waive any right in so doing. They were impelled to attend the arbitration, because the Judge of the Superior Court had refused to grant a supersedeas in the case above referred to, which had been carried to the Supreme Court and it was not their intention to waive any of the rights of State and other taxing authorities, if indeed they could legally do so, which respondents deny.

And, responding further to said paragraphs 16, 17, 18, 19, 20, 21, 22, 23, and 24, respondents say that there was no law authorizing said proceeding for arbitration to the plaintiff, defaulting taxpayer; that the Act of 1918 Pub. Laws, 232, had repealed expressly or by implication the former remedy of arbitration given to defaulting taxpayers, and the arbitration proceeding into which petitioner forced respondent, Tax Receiver, was utterly void, as is declared by the decision of the Supreme Court of the State of Georgia of March 4, 1922, and that whatever transpired leading up to said arbitration and the award rendered by said illegal board, cannot now be pleaded by said defaulting taxpayer as a reason why this court should entertain jurisdiction of his bill in equity and grant him the injunction [fol. 73] sought, because he himself brought about said illegal arbitration, forced the same upon the Tax Receiver, and no act of theirs as public officers of the State could in any way or manner estop the State in its rights to collect its public revenue and taxes justly due.

25. Respondents deny paragraph twenty-five of said petition which alleges as follows,

"That thereupon, on the 5th day of September, 1919, your Orator, being notified by the said Chas. S. Bohler, Tax Collector of said County, that said award had been entered upon the Tax Digest of said County, after verifying the figures and calculations of said Tax Collector made upon the assessments in said award and based upon the tax rates prevailing for each of said years respectively from 1911 to 1917, inclusive, and adding interest thereto at the legal rate of 7%, as provided by Statute in such cases, ascertained the amount so due by your Orator for back taxes for said years from 1911 to 1917 inclusive on said securities which had been assessed by said Tax Receiver, and which had been valued and assessed for taxation in the award of said arbitrators, aggregated a total amount of taxes and in-

terest for all of said years, of $27,980.88, and your Orator thereupon tendered to the said Chas. S. Bohler, Tax Collector of said County, said sum of $27,980.88 in full payment of the amount of said taxes and interest due in accordance with said award, for all of said years, which said tender was then and there refused by the said Chas. S. Bohler, Tax Collector as aforesaid, for the reason that he had not received instructions from the Comptroller General of said State to accept the payment of said taxes. That said tender of $27,980.88 in payment of said taxes so claimed, has been a continuing tender, and is still tendered and offered in settlement of said taxes."

Respondents deny that the award referred to was ever "entered upon the Tax Digest of said County," and that while Orator stated he would give his check for $27,980.88, said Chas. S. Bohler, Tax Collector was immediately notified by the Comptroller General of the State of Georgia not to accept the same, which he did not do, and though no money was actually tendered, and even if it had been done, the same would not have been accepted, so neither the State, nor Richmond County, nor any other taxing authorities thereof have ever accepted anything of value under said illegal award, but the State and Richmond County have always persisted in *its* efforts to collect taxes justly due upon property which had been assessed.

26. Respondents admit paragraph twenty-six of said petition which alleges as follows,

"Thereafter, on the 6th day of September, 1919, the State of Georgia, through the same counsel who had appeared before said [fol. 74] Arbitrators, filed its equitable petition in the Superior Court of Richmond County against your Orator and said arbitrators, the Tax Receiver and Tax Collector of said Richmond County, to set aside said award and assessment made by said arbitrators, and to enjoin the Tax Receiver from placing the same upon the Tax Digest of the County, and to enjoin the Tax Collector from accepting or collecting the taxes due upon said assessment, and alleging that the arbitration and award were null and void, for the following, among other reasons:

That the assessment by the Tax Receiver and the arbitration had been under the Act of 1910, Parks Code 1116-d, whereas the oath administered to the Arbitrators by the Tax Receiver had been under the Equalization Act of 1913;

That the amount of the return of the Arbitrators was so small, as compared with the assessment and with what the plaintiffs claimed was the true value of said securities, as to constitute the same fraudulent in law;

Because the Arbitrators had considered evidence as to what other property in the State, and similar property assessed was returned and assessed for taxation in the State of Georgia, which was charged to be contrary to law, Plaintiffs contending that the Arbitrators had no authority to make any return except the full true value of the securities in question, regardless as to what valuation was placed by assess-

ment or returns on other property of a similar character in the State and in Richmond County;

Because the Arbitrators refused to find the true value of the securities and property which had been assessed by the Tax Receiver, but on the contrary assumed the authority of equalizers of a court of equity, and that the finding of the Board was so insignificantly small, that it shows upon its face bias and prejudice in behalf of the tax payer.

It was prayed that the award, as returned by the Arbitrators, be declared to be null and void, and that the same be set aside.

The petition was filed as a supplemental petition to the previous petition seeking to enjoin the holding of the arbitration, and a copy of the latter petition, with all of its exhibits, was attached as an exhibit thereto. Thereafter, in response to a special demurrer by your Orator, the Plaintiff amended said petition by adding full copies of all of the evidence introduced before the Arbitrators on said hearing, and by attaching a copy of the award as made by the Arbitrators, and also subsequently, by intervention, made said Richmond County a party plaintiff in said cause, but say that said bill contained other grounds than those alleged above."

And respondents say that all this was done because the Judge of the Superior Court refused to grant a supersedeas.

27. Respondents admit paragraph twenty-seven of said petition, to-wit: "Your Orator demurred to said petition at the Appearance Term thereof, upon the general ground that the petition set forth no legal or equitable cause of action, and it appeared from the petition that the award was valid, legal and binding, and moved the dismissal of the same, which said demurrer, upon hearing was sustained [fol. 75] by the Judge of the Superior Court of Richmond County, and the Plaintiffs filed exceptions thereto, and said case was carried to the Supreme Court of Georgia, and a decision rendered therein on the 4th day of March, 1922, in which only four, out of the six Judges of said Court participated, the decision of all four of said Judges affirming the decision of the Superior Court of Richmond County in sustaining said demurrer and dismissing said petitio-."

But Respondents say that the ground upon which said judgment of affirmance was entered was at plaintiff's instance, that no legal or equitable cause of action was set forth, the court held that the State had an adequate remedy at law to issue and levy the tax executions as has been done, and because the Act of 1918 denied a tax defaulter the right to arbitration and that therefore the award sought to be set aside was "wholly void," in which said opinion the higher court said,

"It follows, therefore, that the arbitration proceedings for the assessments of property for taxation here involved, and the award made by the arbitrators, were wholly void; and the petition now under review for the purpose of setting aside the void award was unnecessary, and the Judge of the Superior Court did not err in sustaining the demurrer to the petition and dismissing the same * * *."

"It follows that we concur in the judgment affirming the judgment of the lower court, sustaining the demurrer of the defendants to the supplementary petition in this case. We do so because the complainants have an adequate, full and complete remedy at law. The arbitration proceedings were null and void under the Act of August 17, 1918 (Georgia Laws 1918, p. 234 et seq.). Under this Act there is now no provision of law for arbitrating an assessment made by a receiver of property of a delinquent taxpayer, claimed by the latter to be excessive. In the case of such delinquent taxpayer any objection to the assessments by the receiver, on the ground that they are excessive, must be raised by petition in equity, addressed to the superior court of the county where such property is assessed, under section 5 of this act. This being so, the complainants have a full and complete remedy at law. This void award did not stand in the way. The tax collector can issue his executions based upon the assessments made by the receiver, and proceed to collect the taxes thereunder. If the executor of the delinquent taxpayer is dissatisfied with these assessments, on the ground that they are excessive, he has his remedy under this act. We concur in the judgment of affirmance solely on the ground that the award was void, and equity will not undertake to set aside a void proceeding which does not stand in the way of the enforcement of the payment of taxes, based upon these assessments by executions, levies and sales."

The foregoing excerpts are taken from the opinion of the Judges rendering said decision on March 4, 1922, which said judgment was [fol. 76] concurred in by another Justice though expressing doubt as to whether or not the Act of 1918 under the record was applicable, nevertheless in his concurring opinion he stated:

"I also concur in the judgment of affirmance on the ground that equity will not afford the relief here sought, as the petitioners have a statutory remedy as pointed out above, even if the Act of 1918 is applicable to this case."

And said decision was also concurred in by another justice, who said the Act of 1918 had no application and was not necessary to be considered in the rendition of said decision, which concurrence of all of said justices in the decision rendered, made the main decision written by Chief Justices Fish and Justice Hines, the decision of the court, and whatever points were decided therein was the law of the case.

Further answering said paragraph respondents say, that if this court should hold that the decision of the Supreme Court of Georgia decided nothing and that, therefore, it will without reference to said decision determine the validity of said award, then respondents say that the same is illegal and void for the following reasons:

(a) That under the Act of 1918, page 232, no delinquent tax payer at the time of the holding of said alleged arbitration proceeding on September 2, 1919 was entitled to such arbitration, but if he

desires to raise the issue of excessiveness to any assessment made by a tax receiver upon unreturned, after notice to make such return and a failure to do so, he is required to do so in a court of equity, and this being true said C. A. Steed, had no right to enter into a contract to submit to arbitration anything with reference to said assessments, and the entire proceedings were and are void.

(b) That said submission was not under any Statute or rule of court and for this reason could not bind the State or any of its subdivisions who are the beneficial owners of all taxes sought to be collected, and as the common law awards for the reason that there was no legal authority in Steed, Tax Receiver, to enter into any contract of arbitration which would bind the State or any of its subdivisions, touching their right to collect taxes claimed to be due.

[fol. 77] (c) That even if such contract could have been entered into by said Steed, the same was not entered into as required by law, because the law requires that all contracts entered into by County authorities shall be entered upon the minutes of the Board of Commissioners of the County making the contract, and respondents allege that this was not done in the instant case.

(d) That if under the Statutes of said State the said arbitration could have been legally held, they allege that said arbitrators reached their award in an illegal manner, to-wit: They accepted the valuation placed upon said property by said Tax Receiver and admitted by the taxpayer as being correct, but deducted such indebtedness as was shown by the Executor to be due and owing by said J. B. White to Henry Clews & Company, and then divided the equity of redemption in said securities by four and returned this result as their award, which under the law they had no authority to do, if they had any authority in the premises, which respondents aver they had not, but under the law as existed prior to 1918, a Board of Arbitrators in the arbitration of tax assessments had no other authority than to find the fair market value of the property which had been assessed, therefore said arbitrators acted illegally and the result of their illegal action was to grant an exception from taxation to the Estate of said J. B. White, which under the laws and the Constitution of said State could not be done,—such exemption amounting to nine-tenths of the admitted value of the property, which had been assessed by the tax receiver.

(e) That said award is utterly void, and the same cannot be urged in the instant case to defeat the State and its subdivisions who are the beneficial owners of said taxes from proceeding to enforce the collection thereof under the fi. fas. issued upon the assessments of said C. A. Steed, and which are in this instance sought to be enjoined.

28. Respondents admit as alleged in paragraph twenty-eight of said petition, to-wit:

"That thereafter on the 9th day of March, 1922, before the remittitur and decision was transmitted to the Superior Court of

Richmond County, under the rules and practice of said Supreme [fol. 78] Court, said Defendant Chas. S. Bohler, Tax Collector as aforesaid issued against your Orator Executor of the Estate of said J. B. White, the tax fi. fas. hereinbefore referred to and set forth in Exhibit "A-1 to "A-7" inclusive, for the full amounts as set forth in the assessment made by said Clifford A. Steed, Tax Receiver of said Richmond County, on July 28th, 1919, hereinbefore referred to and set forth as Exhibits "B-1" to "B-7" inclusive, which on March 9, 1922, had been entered by said Tax Receiver on the Tax Digest of said County."

29. Respondents deny paragraph twenty-nine of said petition which alleges,

"That the issuing of said tax executions against your Orator as Executor of the Estate of J. B. White, for the full amount of said assessments by the said Defendant, Chas. S. Bohler, Tax Collector of said County, thereby ignoring and repudiating the award made as aforesaid by said Arbitrators and entered upon the Tax Digest of said County in the manner hereinbefore stated, and the placing of said tax executions by said Bohler, Tax Collector, in the hands of said J. T. Plunkett, Sheriff of said County, for the purpose of having the same levied upon the assets and property of the estate of your Orator's testator, was illegal, contrary to law, and is oppressive and discriminatory against the estate of your Orator's testator for the reasons hereinafter set forth,"

and respondents deny that the issuance of said tax executions as set out in said paragraph were illegal.

30. Respondents in answer to paragraph thirty of said petition for want of information can neither admit nor deny the same, but say, that if as alleged therein as follows:

"That among the stocks of corporations held by Henry Clews & Company of New York, standing in their names, for the benefit of said J. B. White, for each of the years from 1911 to 1917 inclusive, and included in the assessments by said C. A. Steed, Tax Receiver, on July 28th, 1919, as set forth in Exhibits "B-1" to "B-7" inclusive, and included in said pretended and alleged valuation of said securities as set forth in paragraph 15 hereof, were 115 shares of the [fol. 79] capital stock of the National Park Bank of New York, and 100 shares of the capital stock of the National Bank of Commerce, of New York, both of said Banks being organized under the Acts of Congress relating to National Banking Associations, and both being located and doing business in the City of New York and State of New York,"

that such was simply a mathematical error and can be readily corrected and which respondents admit they are perfectly willing to be done.

31. Answering paragraph thirty-one respondents for want of information can neither admit nor deny, but say that if in said assessments there has been included National Bank Stock which should not have been included, as alleged in said paragraph, as follows,

"That under the Act of Congress relating to National Banking Associations, as set forth in U. S Revised Statutes, Par. 5219, it is expressly provided that the shares of any National Banking Associations owned by non-residents of any State, shall be taxed in the City or town where the bank is located, and not elsewhere, and under said Act of Congress, neither the State of Georgia nor the County of Richmond have any power or authority to levy, assess or collect any taxes out of the estate of your Orator's testator on account of any interest or ownership which your Orator's testator may have had in stocks in said National Banks during either of the years from 1911 to 1917 inclusive,"

that such was an oversight and can readily be corrected and which respondents admit they are perfectly willing to be done.

32. Answering paragraph thirty-two respondents say that if said alleged bank stock was of the amounts as set out in said paragraph in the following language,

"That said alleged values of said National Bank Stocks for said years, as included in said assessments by said Tax Receiver of said stocks for each of said years, were as follows;

For 1911	$62,000
" 1912	61,675
" 1913	61,560
" 1914	57,020
" 1915	61,780
" 1916	65,725
" 1917	99,150
or a total for all of said 7 years, of	$468,910

such mistake can readily be corrected and respondents are perfectly willing that such be done, if same be found to be true.

33. Answering paragraph thirty-three respondents can neither admit nor deny the same, but say that if as alleged therein, to-wit:

"That in addition to the inclusion of said National Bank stocks [fol. 80] in said illegal assessment upon which said tax executions have issued as aforesaid, for the year 1913 it appears from the alleged or pretended values thereof furnished to your Orator as aforesaid by said Tax Receiver as the basis of said assessment, that the total alleged or pretended aggregate value of said securities sought to be assessed and taxed for said year, was $1,344,405.83, including said National Bank stock, and also including $10,500. of the capital stock of the Southwestern Railway of Georgia, a Georgia corporation which, under the laws of Georgia, is not taxable by the State or

County, and yet the assessment made by said Steed, Tax Receiver of said County for said year 1913 on said securities and based upon said alleged valuation was $1,558,300.83, or an excess in the assessment over the alleged or pretended total valuation, of $213,895., which after deducting the $10,500, alleged value of the Southwestern Railway Stock for said year, and adding $12,000. the alleged aggregate value of two notes held by your Orator's testator for said year, left a net excess of the assessment over the alleged or pretended value, including the stocks in said National Banks of $212,395., and said assessment, on its face is excessive, illegal and void to that extent,"

that such was simply an error and can readily be corrected and respondents are perfectly willing that such be done.

34. For want of information respondents can neither admit nor deny paragraph thirty-four, but say that if the facts as alleged therein are true, to-wit,

"That for the year 1917 the alleged or pretended value of the securities held by said Henry Clews & Company, according to the information furnished to your Orator by said Tax Receiver as aforesaid, for said year, was $1,375,408.50, which included the Southwestern Railroad stock, a Georgia corporation, of the alleged or pretended value of $10,500., and the aforesaid stocks in said National Banks of the City of New York, of the alleged or pretended value of $99,150. That the alleged full value of all local stocks, notes and money in bank, included in said assessment according to Exhibit "C," was $195,152.19, or a total alleged or pretended full value of all of said securities, notes and money, of $1,570,560.69, whereas the assessment made by said Steed, Tax Receiver, on July 28th, 1919, for the full amount of which said tax fi. fas. for said year have issued, is $1,623,567.52, or an excess in the assessment over the alleged or pretended full value of all of the securities, money and notes, without excluding said Southwestern Railway Stock or the stocks in said National Banks of New York, of $53,006.83,"

then said error can readily be corrected, which respondents are perfectly willing to be done.

35. For want of information respondents can neither admit nor deny paragraph thirty-five, but say that if the facts as set out therein are true, to-wit:

"That the excessive and illegal taxes included in the amounts for which said tax fi. fas. issued, based upon the patent errors in said assessments as described above, for each of said years, according to the tax rates for said years, as appear in Exhibit "A-8" are as follows: [fol. 81] For the year 1911, prin. $837; int. to date $600.54; total, $1,437.54.

For the year 1912, prin. $832.61; int. to date $539.09; total, $1,371.60.

For the year 1913, prin. $3,999.74; int. to date $2,309.83; total, $6,309.57.

For the year 1914, prin. $792.57; int. to date $402.21; total, $1,194.78.

For the year 1915, prin. $901.98; int. to date $338.36; total, $1,240.34.

For the year 1916, prin. $972.73; int. to date $357.47; total, $1,330.20.

For the year 1917, prin. $2,553.71; int. to date $759.71; total, $3,313.42.

That the total thereof for all of said years is $16,197.71.

That said tax fi. fas. for said sums are illegal, contrary to law, and should be restrained and enjoined from levy and enforcement against said estate of J. B. White, and should be declared null and void, and ordered cancelled.

that such error can be readily corrected, which respondents are perfectly willing to be done, and if such amounts were improperly added the same was solely an unintentional error caused by plaintiff growing out of the fact that he refused to make a proper return.

36. Answering paragraph thirty-six respondents admit "That the aggregate amount of all of said Tax fi. fas. issued in the manner aforesaid, is the principal sum of $145,568.30, and interest thereon to date, of $70,764.01, or a total of principal and interest to date of $216,332.31", but deny that "the amount of taxes due by the estate of said J. B. White for all of said years inclusive, based upon the award of said Arbitrators rendered September 2nd, 1919, as calculated by said Defendant, Chas. S. Bohler, Tax Collector of said County, is $27,980.88, which said amount was, by your Orator, tendered as aforesaid to said Chas. S. Bohler, Tax Collector as aforesaid, on the 5th day of September, 1919, after said award had been entered upon the Tax Digest of said Richmond County for the respective years from 1911 to 1917 inclusive." They deny "that said amounts now demanded and exacted from your Orator as Executor as aforesaid, by said Defendant Tax Collector and in said Tax fi. fas., and which are [fol. 82] sought to be collected by the enforcement of said fi. fas. against the property and assets of the estate of your Orator's testator, is excessive, illegal and in violation of law, to the extent of $188,351.43, and said tax fi. fas. should be declared illegal, null and void, and cancelled, and said J. T. Plunkett, Sheriff of said County, should be enjoined from enforcing said tax fi. fas. by levy or otherwise", but on the contrary aver that said tax fi. fas. are legal and were issued upon a legal assessment.

37. Respondents deny paragraph thirty-seven of said petition wherein it is alleged, as follows:

"That said assessments made by said Clifford A. Steed as Tax Receiver of said County, in the manner aforesaid, on the 28th day of July, 1919, were expressly made under the provisions of the Act of the General Assembly of Georgia of 1919, as codified in Parks Political Code of Georgia, Par. 1116-d, which expressly provides for the right of arbitration to the taxpayers when dissatisfied with the

assessment as made by the Tax Receiver on the ground that the same is excessive."

38. Respondents deny paragraph thirty-eight of said petition wherein it is alleged, as follows:

"That the right of your Orator to arbitration under the provisions of said Act and said section of the Code, which was sought to be denied to your Orator in the equitable petition filed in the name of the State of Georgia against your Orator and the Arbitrators who had been selected in pursuance of the provisions of the Section of the Code referred to above, on September 2nd, 1919, in which an injunction against the holding of said arbitration was sought and prayed for, was fully and finally established and determined by the decision of the Superior Court of said Richmond County in denying and refusing said injunction upon all of the grounds in said petition set forth and in the affirmance of said decision by the Supreme Court of Georgia in the case of the State of Georgia vs. Callaway, Executor, et al., reported in 150th Ga. Rep. p. 235. That said decision by the Supreme Court of Georgia is res adjudicata as to the right of your Orator to arbitration of said assessments as made by said Tax Receiver against the estate of your Orator's testator, and as to the legality of the organization of said Board of Arbitration under the then prevailing statute law of the State of Georgia applicable in such cases, and so far as the right of your Orator to arbitration was concerned, and so far as the legality of said Board of Arbitrators is concerned, is conclusive and binding under the laws of Georgia."

Further responding to said paragraph respondents say that the same contentions set out therein with reference to the validity of said arbitration proceedings were strenuously urged upon the Supreme [fol. 83] Court in argument of counsel for Orator, who appeared in his own proper person in the Supreme Court of Georgia, when the case decided by the Supreme Court of Georgia, March 4, 1922, was argued, and throughout his brief it was insisted by him that the decision in the 150th Ga. Rep. referred to fully established his right to such arbitration but notwithstanding such contentions, the Supreme Court of Georgia held that the arbitration proceedings were illegal and wholly void.

39. Respondents deny paragraph thirty-nine of said petition wherein it is alleged, as follows:

"That after the attempt to enjoin said arbitration proceedings and deny to your Orator the right to arbitration of the assessments made by said Tax Receiver had failed, and counsel now representing the State of Georgia and the County of Richmond appeared with said Tax Receiver, before said Board of Arbitrators and participated in said arbitration by introducing evidence and in making arguments before said arbitrators, and when said arbitration was completed and said arbitrators, in compliance with the Statutes governing such proceedings, made their unanimous award assessing said securities in question for each of the years for which the assessments had been

made, said award, under the Statute in such cases became final upon the State of Georgia, County of Richmond and all other taxing authorities, as well as upon your Orator, and when the amount of said assessment so fixed by arbitration was entered upon the Tax Digest of said County for the years respectively from 1911 to 1917, the same became conclusive and final and fixed the only assessments upon which, under the law, taxes could be levied or collected for said years on said securities of the estate of your Orator's testator."

Responding further to said paragraph respondents say that it is true as alleged therein that "counsel now representing the State of Georgia and County of Richmond" did appear before said Board of Arbitrators but did not waive any of the rights of the State or other taxing subdivisions thereof by doing so. They expressly stated before the hearing that no such rights were waived, if indeed they could have been waived, which respondents deny they had authority to do, on the contrary, respondents say that they were forced to appear by reason of the fact that the Superior Court had refused an injunction to the holding of said award, and Orator, Executor of said defaulting taxpayer was the one urging the holding of said arbitration and not respondents, and respondents therefore say, nothing which said counsel did nor which said Steed did, could confer jurisdiction upon said Board of Arbitrators when the express Statutes of the State of Georgia prohibited such Board from entertaining jurisdiction in [fol. 84] such matters.

40. Respondents deny paragraph forty of said petition wherein it is alleged, as follows:

"That the subsequent filing of the equitable petition in behalf of the State of Georgia by counsel now representing the State in said tax proceedings, attacking the legality and validity of said award, and seeking to set the same aside upon the grounds, among others, or fraud, and that the amount of the award for each of said years respectively was too small, and so small as to amount to fraud, and that said assessors were bound to find under the evidence adduced before the arbitrators, which was incorporated in said petition by amendment, the full alleged value of the securities sought to be assessed and taxed, and seeking to enjoin said award, to have the same declared null and void, and to enjoin the Tax Collector of said County from accepting the taxes due based upon the amount of said assessments so fixed by said award, which said petition was dismissed by the Superior Court of Richmond County on a general demurrer, and the relief and injunction prayed for denied, and which said decision was affirmed by the Supreme Court of Georgia in its decision rendered March 4th, 1922, in said cause, established the fairness, legality and binding force of said award and fixed the same as the true assessment under the Statutory laws of Georgia, as the only amounts and only assessments upon which taxes against the estate of your Orator's testator, could be levied or collected on said securities for said years, and fixed the only amounts for which executions or such taxes could be issued against the estate of your Orator's testator."

41. Respondents admit paragraph forty-one of said petition wherein it is alleged, as follows:

"Your Orator is informed and charges that the Defendant, Chas. S. Bohler, Tax Collector of said County, after said decision of the Supreme Court of Georgia, in the case aforesaid, was rendered on March 4th, 1922, acting under the advise of counsel representing said State and County in the previous litigation, and ignoring the assessments as fixed by said award which had been entered upon the Tax Digests of said County as provided by the laws of said State, issued said Tax Executions set forth in Exhibits "A (1 to 7)" claiming to act under the provisions of an Act of the Legislature of Georgia approved July 31st, 1918, (Acts 1918 p. 232) wherein it is provided that where the owner of property has omitted to return the same for taxation at the time and for the years the return should have been made, it shall be the duty of the Tax Receiver to assess such property for taxation from the best information he can obtain as to its value for the years in default, and notify such delinquent of the valuation, which shall be final unless the person so notified raises the question that it is excessive, in which event the future procedure shall be by petition in equity in the Superior Court of the County wherein such property is assessed."

[fol. 85] except respondents deny the words "which had been entered upon the Tax Digests of said County as provided by the laws of said State."

Further answering said paragraph respondents say that the assessment was made under the Act of 1918, as this was the only law in force at that time for the assessment of such property.

42. Respondents deny paragraph forty-two of said petition which alleges as follows:

"That prior to the passage of said Act of 1918, the statutory law of Georgia with reference to the assessment and collection of taxes where the owner of property had omitted to return the same, and under which the Tax Receiver of said County proceeded in making the assessment against said estate of J. B. White on July 28th, 1919, are contained in the Act of the Legislature of said State approved August 15th, 1908, Public Acts 1908 p. 25 as amended by the Act of the Legislature of said State approved August 13th, 1910, Public Acts of 1910 p. 27, which said Acts are codified in Parks' Political Code of Georgia, Secs. 1055, 1057, 1059, 1061, 1116-a and 1116-d. That in the last Section of the Code cited above, it is expressly provided that after the Tax Receiver makes the assessment from the best information he can procure, the person so notified of said as- [fol. 86] sessment shall have the privilege, within twenty days after receiving such notice, of referring the question of the true value to arbitrators, one to be chosen by himself, one to be chosen by the Tax Receiver, with the power to choose an umpire in case of disagreement, and their award shall be final. Said Act further provides that in the event said two arbitrators shall fail to agree or to name

an umpire within twenty days after their appointment, an umpire shall be named by the Ordinary or County Board of Commissioners of the County as the case may be."

43. Respondents admit paragraph forty-three of said petition which alleges as follows:

"That prior to the passage of said Acts of 1908 and 1910, the universal and uniform method of finally assessing and fixing the valuation of all property in Georgia for taxation, except in instances where the owner had defaulted or failed to return his property for taxation, was by arbitration, and said arbitration method was uniformly applied to all classes of taxable property within the State of Georgia. That said Act of 1908, as amended by the Act of 1910, applied the same method of arbitration in cases where the owners of said property had omitted to make returns thereof at the times and in the years for which said property should have been returned, said Acts covering both classes of property to be returned to the Tax Receiver of the County and that class of property to be returned to the Comptroller General of the State, thereby making the system of arbitration applicable in the assessment of all classes of property, without exception."

44. Respondents deny paragraph forty-four, wherein it is alleged as follows:

"That the tax act known as the Tax Equalization Act passed by the General Assembly and approved August 14th, 1913, codified in Parks Pol. Code, Sec. 1116-f to 1116-v inclusive, still preserved the method of arbitration in finally fixing the assessment of values of property for taxation."

45. Respondents admit paragraph forty-five, wherein it is alleged as follows:

"That said Act of 1918 recited above, expressly reserved to the taxpayers of said State required to make their returns to the Comptroller General of said State who may have omitted to return their property for taxation at the times and for the years for which they should have been returned the same right of arbitration for finally fixing the values of property in question for assessment and taxation."

46. Respondents deny paragraph forty-six, wherein it is alleged as follows:

"Your Orator alleges that said Act of 1918 does not either by its express terms, nor by implication, repeal the arbitration provisions of said Act of 1910, as codified in Parks Pol. Code Sec. 1116-d, as cited above, but merely provides a cumulative method of procedure and remedy for the taxpayer in the assessment of taxes where the [fol. 87] owner of the property has omitted to return the same for taxation, and also to provide machinery for the assessment and col-

lection of taxes on property which had been previously returned, and either grossly undervalued at the time returned, or on property which had been previously assessed for taxation at a figure grossly below its true value."

47. Respondents deny paragraph forty-seven, wherein it is alleged as follows:

"That said Act of 1918 does not mention or refer to the aforesaid Acts of 1908 and the amendatory Act of 1910 codified in Parks Political Code, Sec. 1116-d, and if it is contended, or should be held, that said Act of 1918 repeals the arbitration provision of said Act of 1910, codified as stated above, or was intended to repeal the same, your Orator alleges that said Act of 1918 is ineffective as a repealing statute, and such attempted repeal was a direct violation of the provision of the Constitution of the State of Georgia, as set forth in Art. 3, Sec. 7, Par. 17 (Georgia Civil Code, Sec. 6445), as follows:

'No law, or section of the Code, shall be amended or repealed by mere reference to its title or to the number of the section of the Code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, as well as the alteration to be made.'"

48. Respondents deny paragraph forty-eight, wherein it is alleged as follows:

"That the provision of said Act of 1918 providing for a re-assessment of property of the taxpayer which had been previously returned and assessed for taxation, is retroactive legislation and is in violation of Art. 1, Sec. 3, Par. 2 of the Constitution of the State of Georgia (Civil Code Sec. 6389) which prohibits the legislature from passing any ex post facto law or any retroactive law, and in like manner is in violation of the provisions of Art. 1, Sec. 9, Par. 3 of the Constitution of the United States (Civil Code Sec. 6647) which prohibits the passage of any ex post facto law."

49. Respondents deny paragraph forty-nine, wherein it is alleged as follows:

"That should it be contended or held that the Act of 1918 repealed the arbitration provision of the Act of 1910 (Parks Pol. Code Sec. 1116-b) and thereby denies to the estate of your Orator's testator and other taxpayers or estates of deceased taxpayers who are required to make their returns to the Tax Receivers of the various counties of the State, said Act of 1918 is, in that respect, directly and expressly discriminatory as it expressly preserves to that class of taxpayers who are required by law to make returns to the Comptroller General of the State and who may have either omitted to return property for taxation at the time or for the years the return should have been made, or, having returned property, or a part of the same, grossly undervalued the property returned, or the prop-

erty has been assessed for taxation at a figure grossly below its true value, the full right and privilege of arbitration, as in the case of all other taxpayers and owners of property liable for taxation in said State, and said Act of 1918, if it accomplishes such discrimination, is [fol. 88] in direct violation of the uniformity clause of the tax provision as set forth in the Constitution of the State of Georgia in Art. 7, Sec. 2, Par. 1 thereof, requiring that all taxation shall be uniform upon the same class of subjects and ad valorem on other property subject to be taxed within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, and is also violative of Par. 2, Sec. 1, Art. 4 of the Constitution of Georgia (Civil Code Sec. 6358) which is as follows:

'Protection to persons and property is the paramount duty of government, and shall be impartial and complete.'

and is in further express violation of the 14th amendment to the Constitution of the United States, which provides that no State shall deny to any person within its jurisdiction equal protection of the laws."

50. Respondents deny paragraph fifty of said petition wherein it is alleged as follows:

"That while said system or plan of arbitration adopted by the Legislative Branch of the State Government as the uniform and universal method of finally fixing the values of all property in said State liable to taxation, for assessment and payment of taxes has not produced exact equality of burden in taxation, and has resulted in the assessment of all the property of the State at values greatly less than its full or fair ad valorem value, said system has been uniformly adhered to by the legislative branch of the State Government, and if said Act of 1918, as claimed, denies to the estate of your Orator's testator the statutory right of arbitration, while preserving to all other taxpayers of the State, except those in your Orator's class, said right of arbitration, said Act is discriminatory, illegal, contrary to law, and in violation of the uniformity tax provision, and the impartial protection provision of the Constitution of Georgia as cited above, and is violative of and contrary to the equal protection clause of the Constitution of the United States, as cited above, and is null and void, and inapplicable in said case."

51. Respondents deny paragraph fifty-one wherein it is alleged as follows:

"Your Orator charges, upon information and belief, that under the system of taxation and assessment of taxes in said State as provided by the laws of said State and as enforced by the Tax Officials using and adopting said system of taxation during said years from 1911 to 1917 inclusive, the assessment and valuation of all property in said State did not average 25% of the full value thereof, and on stocks and bonds, money, notes and accounts, the class of property of the estate of J. B. White sought to be taxed, did not amount

to 10% of the true value thereof, whereas the award of said arbitrators fixed the value of said securities—after deducting said palpable errors in the assessments, the alleged or pretended values of said National Bank stocks, and of the Southwestern Rwy. of Georgia—at amounts varying from 12% to 25% of the full alleged or pretended full market value of said securities for said years."

52. Responding to paragraph fifty-two, respondents say that any assessment made by the County Board of Tax Assessors of the prop- [fol. 89] erty in question for the year 1918 can have no bearing upon the issues presented, and for want of information, respondents can neither admit nor deny as therein alleged, to-wit:

"That the County Board of Tax Assessors of said County, the legally constituted body for equalizing and assessing property in said County for taxation, for the year 1918 assessed all of said securities, money and notes, at a total of $250,000, whereas for the *proceeding* year 1917 said Arbitrators, on a less aggregate amount of alleged full values, assessed the same securities, money and notes, at $360,813.92, or 44% greater than the assessment by said County Board of Assessors."

53. Responding to paragraph fifty-three, respondents say that said allegations raise a question of law but they deny the same wherein it is alleged as follows:

"That said award made by said Arbitrators under full review thereof and of all of the evidence submitted to the arbitrators, has been approved by the Courts of said State, both by the Superior Court of Richmond County and by the Supreme Court of Georgia, and under the Tax Act of 1910 is final as to the amount of assessments for purpose of taxation, and if the same is to be treated as a nullity by the tax officials of said State and County under said Act of 1918, and your Orator is forced to go into a court of equity in said County where the amounts of the assessments are to be fixed either at the full value, or the full alleged or pretended value of said securities, or at a value greater than those which have been fixed by an award of arbitrators under the Statute, regular, fair and free from fraud, said action on the part of said tax officials will be clearly discriminatory against the estate of your Orator's testator, in favor of the other taxpayers of the State, and will place upon the estate of your Orator's testator the heavy burden, delays, and expenses of litigation not placed upon the other taxpayers of said State, all of which will be in violation of the uniformity tax provision, and the impartial protection provision of the Constitution of Georgia, cited above, and against the equal protection clause, as well as the due process clause of the 14th Amendment to the Constitution of the United States."

54. Respondents deny paragraph fifty-four, wherein it is alleged as follows:

"That the assessments based upon said award, and the taxes due thereon for said years, which your Orator has tendered, and still tenders and offers to pay, are largely in excess of the assessments made and taxes required of other taxpayers upon the same classes of securities in the State of Georgia, and in the County of Richmond. That comparatively few owners of stocks in non-resident corporations, or of taxable bonds, either return the same for taxation, or are required to return the same by the tax officials of the counties of the State, nor are they assessed, and when returned or assessed, are returned at a nominal value, resulting in assessments and taxation thereon throughout the State at a gross amount as your Orator is informed and believes not exceeding 5% upon the full value thereof, with the result as to money, notes and accounts, not exceeding 10% of the full value thereof."

[fol. 90] 55. Respondents deny paragraph fifty-five wherein it is alleged as follows:

"Your Orator charges, upon information and belief, that in said County of Richmond, during all of said years from 1911 to 1917, inclusive, bonds of local corporations owned by residents of said County, were not returned or assessed for taxation. That during said years the inventories of estates of a large number of deceased residents of said County appear upon the records of the Court of Ordinary of said County, the same source from which the Tax Receiver obtained the list of securities belonging to the estate of said J. B. White as the basis of this proceeding, showing taxable securities, money and notes owned by said deceased taxpayers amounting to over a million and a half dollars which had not been returned for taxation nor assessed, and yet notwithstanding said facts neither said Tax Receiver nor any other agent or representative of said State or County, have made any effort to have said securities, money, or notes returned, assessed or taxed for either of said years, or for any preceding year except in the case of one small estate, where the heirs were all non-residents, and the settlement made in that case was at a nominal percentage of the full value. That the Tax Receiver of said County claims that neither he, as Tax Receiver, nor the County Board of Tax Assessors, ever assess any property at its full value, but try to assess real estate at 66 2/3% of its value, and money, notes and securities where returned, at 50% of its value. That even such assessments are subject to the uniform right of the owner to arbitration, which almost uniformly further reduces the assessment."

56. Respondents deny paragraph fifty-six wherein it is alleged as follows:

"Your Orator therefore alleges that the act of said Tax Receiver in making said assessments of July 28th, 1919, set forth in Exhibit "B-1" to "B-7" inclusive, against the estate of said J. B. White, for said amounts grossly in excess of even the fair market value of said securities, and the issuing of said Tax executions against the estate of said J. B. White by said Tax Collector, as set forth in Ex-

hibit "A-1" to "A-7" inclusive, is grossly discriminatory against said estate, and is an administration of the law by said tax officials in a manner, and with results grossly discriminatory against said estate, and in violation of the uniform provision of the tax clause, and the impartial protection provision of the Constitution of Georgia, and is contrary to and in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

57. Respondents deny paragraph fifty-seven wherein it is alleged as follows:

"That the tax executions issued as aforesaid by said Chas. S. Bohler, Tax Collector, against your Orator as Executor as aforesaid, have been placed in the hands of said Defendant, J. T. Plunkett, Sheriff of said County, for levy and sale of property and assets of said estate, to satisfy the same, and unless restrained, said Sheriff will levy said fi. fas. upon property belonging to said estate, and advertise and sell the same, to the great wrong, injury and damage of said estate."

[fol. 91] 58. Respondents deny paragraph fifty-eight wherein it is alleged as follows:

"That the entry of said illegal assessments by said Tax Receiver upon the Tax Digests of said County, and the issuing of said illegal tax executions thereon, and entering the same upon the tax execution docket by said Tax Collector, constitutes a cloud upon the title of all the property of the estate of your Orator's testator, and the same should be declared illegal and void, and ordered cancelled upon said records."

59. Respondents deny paragraph fifty-nine wherein it is alleged as follows:

"That the levy of said tax executions for said grossly excessive and illegal sums by said Sheriff upon property belonging to said estate of J. B. White will cloud the title, interfere with the due operation and administration thereof, and cause irreparable loss and damage to said estate, and the levy of said executions by said J. T. Plunkett, Sheriff, as aforesaid, should be temporarily restrained until your Orator can have a hearing upon all the matters hereinbefore set forth in the manner provided by the acts of Congress in such cases."

60. Respondents deny paragraph sixty of said petition wherein it is alleged as follows:

"That your Orator is entitled to have said Tax assessments, and the tax executions issued thereon in the manner aforesaid, declared illegal, contrary to law, and void, and that said assessments be cancelled upon the Tax Digest of said County, and that said tax fi. fas. and the entries thereof on the tax execution dockets of said County, be cancelled."

61. Respondents deny paragraph sixty-one wherein it is alleged as follows:

"All of which actings and doings of the said Defendants, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your Orator. In the premises, in consideration whereof, and for as much as your Orator is remediless in the premises at and by the strict rules of the common law, and can only have relief in a court of equity, where matters of this nature are properly cognizable and relievable."

[fol. 92] 62. Responding further to said bill, respondents say that said J. B. White had his domicile in Richmond County, Georgia from 1866 down until his death in 1917, did business therein and maintained his home in the country at what is known as the "Dye Place" in said Richmond County, which was his domicile at the date of his death; that he never ceased to regard Richmond County as his domicile, and while he went to Europe in 1909 and traveled therein from place to place, he at the same time kept up his connections with his business interest in Augusta, Georgia, where he had some local agents representing him; the last year of his life, he spent in Italy, and died in Genoa, Italy, in March, 1917, never having acquired a new domicile in any other country; that by documents signed by him while in England, and on the continent of Europe, during his absence from Richmond County (see paragraph seven, supra), he denied that he was an alien or had ever acquired a new domicile. In his Will executed in England, he described himself as of the "Dye Place" near the City of Augusta, Richmond County, Georgia, United States of America", stating that he was temporarily residing in Hotel Metripole in London, England, and he thus while in England denied that he was a British subject and in the documents hereinabove quoted from (see said paragraph seven), he time and time again reiterated that he was only temporarily absent from his home, travelling in Europe. Indeed no place is alleged by plaintiff as being the domicile of said J. B. White other than in Richmond County, Georgia, and respondents say that the only domicile which the said White had was in said Richmond County, Georgia, in the United States of America, and his personal and intangible property had its situs there for the purpose of taxation.

63. That the brothers and sisters of said J. B. White who are residuary legatees under his Will, and his Executor, when they probated the Will of said White, all asserted that White's domicile was in Richmond County, Georgia and they, one, and all so informed the Court of Ordinary of Richmond County, Georgia—produced evidence from the United States Consul in Genoa, Italy, where he died, [fol. 93] that said White was a naturalized citizen of the United States, and produced before the said Court of Ordinary, certain correspondence of the State Department of the United States from the American Consul at Genoa, Italy to this effect, and it appears that the brother of testator one, J. C. White, who resides in Belfast Ireland had a copy of such statement of naturalization of said J. B.

White sent to the Executor named, to wit: E. H. Callaway, Orator, and he said Executor produced it in the Court of Ordinary of Richmond County, Georgia, when probated the Will, all of which showed that White was a naturalized citizen, temporarly in Italy when he died and it was upon this proof before the Court of Ordinary that this Georgia Court admitted said Will to probate as a domestic Will and issued letters testamentary accordingly to Orator, as Executor; and respondents say that Orator is now estopped from setting up the contrary of all this in an effort to escape taxation * * *. He is estopped from now claiming that said J. B. White was not what he represented himself to be under said Will, a naturalized citizen of the United States with his domicile in Richmond County, Georgia. Indeed said Executor went so far as to file an inventory of the property owned by said White, which contained a list of securities being taxed and showed that they were *largely* with Henry Clews & Company, Bankers of New York City, and paid the inheritance tax and the Estate tax, the Federal Government which said last Government he paid some $250,000 or more and to the State of Georgia, some $60,000 or more, yet he now seeks by this proceeding to avoid the payment of ad valorem tax on certain personal property, although the same was never taxed by the State of Georgia, Richmond County, nor the Board of Education of Richmond County, and respondents insist that he is now estopped from claiming said property is not subject to taxation.

64. Respondents further say that said J. B. White was a defaulter with reference to said property, as he had never returned the same for taxation; that for the seven years in question the said White's tax returns under the head of personal property and under which [fol. 94] head should have been included the property taxed, shows that he only returned some $300.00 worth of household and kitchen furniture, and notwithstanding all of the vast estate owned by him and subject to taxation, he failed and refused to return the same for taxation during his life for said years, and when after his death its existence was disclosed and the State and other taxing authorities of the State and of Richmond County, discovered that such property had never been returned for taxation, the said taxing officials of said County, naturally as it was their duty to do, insisted upon a return thereof for the purpose of taxation for the seven years in question, and even his Executor after his death had been called upon to make a return thereof for the purpose of taxation, failed and refused to include the same in his return, although he had listed said property in the inventory of said estate with the Ordinary of Richmond County and sworn to the value thereof, as stated, whereupon the tax receiver of Richmond County duly assessed the same upon sworn evidence submitted to him, consisting of evidence of White's Bankers, Henry Clews & Company, and the evidence of valuation of certain loan clerks of a New York Bank, of the value of said securities upon the taxable dates for the said several years in question, and according to the laws of Georgia, assessed the same and respondents aver that plaintiff has never contested that this

property did not exist and that it was not of the value at which it was assessed for by said Tax Receiver. The securities which taxable dates were as follows: 1911, February 1st; 1912, January 31; 1913, January 1; 1914, January 1; 1915, January 1; 1916, Jan. 1; and 1917, Jan. 1st; owned by said J. B. White on the taxable dates for said several years, and the valuation placed thereon upon said taxable dates is not disputed nor have any taxes ever been paid thereon to any Government, and respondents say, taxes assessed are justly due. Indeed that the property assessed was the property of said J. B. White is alleged, by Orator in his Bill; for instance in paragraph 11, he alleges that there were in the possession of Henry Clews & Company "various and sundry securities of the approximate value of One Million Dollars or more which belonged to the Estate of said J. B. White", and he also alleged in paragraph seven thereof, that [fol. 95] the same were paid for partially "from the income of said securities", all of which such admissions thereof show that White was the beneficial owner thereof, and this being true the same had its situs for the purpose of taxation at the domicile of said White, which respondents aver was in Richmond County, for and during all of the years in question.

65. Respondents aver that the arbitration proceedings which Orator sets up and by which he seeks to prevent payment of the taxes claimed to be due, are void, because under the law in existence at that time, September 2, 1919, no arbitration as to the value of said securities could be had, and that one was gone through with, does not make the arbitration valid nor estop the State and the other beneficiaries of said taxes from claiming that the unauthorized act of the tax receiver touching said arbitration proceedings, was invalid and did not bind them.

66. That the Legislature of the State exercising its undoubted constitutional privileges had changed the remedy for defaulting taxpayers from arbitration and required those who had not returned their property, but whose unreturned property had been assessed by the tax receiver, after he had been given notice to make a return thereof and refused to do so, to go into equity if he desires to raise any issue of excessiveness or the validity of such tax in any way, and therefore the arbitration proceedings in this case and other proceedings leading up to it were wholly unauthorized by law, and the Supreme Court of the State of Georgia has so declared as hereinabove more specifically set out.

67. That said tax payer while claiming in this proceeding that he is being denied the equal protection of the laws of the State of Georgia, the petition shows, that he has refused to even go into the courts of said State, but has rather appealed to this court, which respondents say he has no right to do.

68. Respondents further say that the State law does not discriminate but classes all individual defaulters as to unreturned property alike, that there has been no concerted action by the tax officials of

said State to so administer the tax law thereof in such way as to [fol. 96] violate any fundamental part of the constitution, neither has there been any rule or system of valuation adopted by them designed to operate unequally against said defaulting tax payer, which is in any way contrary to the Constitution of the State of Georgia or the Fourteenth Amendment of the Constitution of the United States; that the Comptroller General of said State of Georgia, who has under the law of Georgia general supervision over all tax receivers of Georgia, including the tax receiver of Richmond County and, under the law of Georgia, is required to issue to said several tax receiver instructions touching their duties with reference to the assessment of property, and respondents aver that this the said Comptroller General, for each of the years in question did, and in which said instructions the Comptroller General for each of said years insisted that it was the duty of such tax receivers to assess all property "at its market value", which is shown by an affidavit of the said Comptroller General, which is herewith presented to the Court, and if necessary, respondents pray leave to attach the same as an exhibit.

Wherefore respondents having fully answered said bill pray that the relief sought therein be denied and an injunction refused, and said tax executions be allowed to proceed; that if it should appear that any error in addition appears in said assessments, or should it appear that there is included stock of the National Banks which is not taxable, or of the Southwestern Railroad Company of Georgia, that such error be corrected and credit entered upon the fi. fas. in question and that the fi. fas. with such credit be directed to proceed.

Geo. M. Napier, Attorney General. Seward M. Smith, Assistant Attorney General. Pierce Bros., A. L. Franklin, Wm. K. Miller, Of Counsel for Respondents.

[fol. 97] Affidavit of J. T. Plunkett to above paper omitted in printing.

[File endorsement omitted.]

[fol. 98] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO ORIGINAL BILL—Filed May 1, 1922

Now comes E. H. Callaway, Executor of the estate of J. B. White, plaintiff, in the above stated cause and moves to amend the original bill therein by adding at the end of paragraph 6 the following paragraphs:

6-a. That on the first of January, 1919, your orator delivered to John C. White, Robert Skinner and Edward Skinner as Trustees

and Legatees under the will of J. B. White all of the securities belonging to said estate which had been held by Henry Clews & Company of New York for said estate, the same being delivered by your orator to said Henry Clews & Company as the agents for said trustees, and at the same time, your orator executed and had recorded October 18, 1919 in the office of the Clerk of Superior Court of Richmond County, Georgia, a written assent to the legacy in said will, devising the real estate of testator located in the City of Augusta and in Richmond County, Georgia, (except as to a plantation in said county known as the Dye Place) to said trustees under said will. A list of said real estate as taken from the inventory of said estate being hereunto attached, marked Exhibit I. That with the exception of some few small lots of said real estate heretofore sold by said trustees from said property known and described as the McKeon property, said trustees had been in possession of all of said real estate since [fol. 99] January 1st, 1919 and are still in possession of same and are holding and controlling said property under the terms of the will of your orator's testator.

6-b. That it is the duty of your orator as executor of said will to protect the title and possession of said trustees in all of said property, including said real estate, and for that purpose and to meet and satisfy all legal claims, and demands including said claims for back taxes against said estate, your orator as executor as aforesaid, after making other transfers to said trustees, retained in his possession as executor stocks, bonds and cash belonging to said estate of the aggregate value in excess of Three Hundred Thousand ($300,000.00) Dollars, embracing among other securities, 500 shares of capital stock of the Georgia Railroad and Banking Company of the value of One Hundred and Five Thousand ($105,000.00) Dollars, 261 shares of Augusta Factory stock of the value of Ten Thousand ($10,000) Dollars, City of Augusta Bonds of the value of Seventy-Five Thousand ($75,000.00) Dollars and as cash on deposit in banks in excess of Thirty Thousand ($30,000.00) Dollars, all of which he still has in his possession as such executor. That the issuing of said tax executions and placing the same upon the tax execution dockets of said county has the effect (illegal though the same be as herein set forth) of making said tax fi. fas., colorable liens upon the records of said Richmond County, Georgia, upon all of said real estate and will constitute a cloud upon the title of all of said real estate.

And to further amend said bill by adding at the end of Paragraph 55, the following paragraph:

55-a. That said practice and custom of tax assessing officials of the State of Georgia in receiving returns of property and in making assessments thereon for the purpose of state and county taxation during the years from 1911 to 1917 inclusive, and even up to the present time, for the small percentage of actual or market value thereof [fol. 100] as hereinbefore set forth has been and is general, systematic and intentional; while the assessments as made by said tax receiver on said securities of your orator's testator were deliberately made with the intention of being at the full pretended market value

of said securities but were actually made recklessly at amounts greatly in excess even of the pretended full market value of said securities and were intentionally and discriminatory against the estate of your orator's testator.

Callaway & Howard, Attorneys for Plaintiff.

Affidavit of E. H. Callaway to above paper omitted in printing.

[fol. 101] "Exhibit I" to Amendment to Complaint

List of Real Estate in the City of Augusta, Georgia

Ansley, Broad 871-73	10,000.00
Bostock, Broad 1220-22-25, Ellis 1212-1215	30,000.00
Butler's Alley, Broad 972	30,000.00
Collins, Broad 1157-59-61 and Jones 1134	8,500.00
Deveny, Broad 879	30,000.00
Ferris, Broad 826-28	50,000.00
Fredericksburg, Broad 937	17,000.00
Harker, Broad 543-45	4,000.00
Hope, 933-35	10,000.00
Keenan, Broad 1108-10-12-14	35,000.00
Kress, Broad 958-964, Ellis, no number	55,000.00
McKeon, Broad 1401-1439; Jones 1402-4	66,000.00
Montgomery, Broad 732-36 and Ellis 733	400,000.00
Planters Hotel, Broad 945	40,000.00
Reynolds Street, Reynolds 926	3,000.00
Spear, Ellis 941-943; Broad 966-68-70	40,000.00
White House #1, Broad 974-984	120,000.00
White House #2, Ellis 945-47	6,000.00
Holleywood, 1887 acres	20,000.00
Household furniture and effects at the Dye Place as per list attached	770.71

Allowed subject to motion to dismiss this April 23, 1922.

Beverly D. Evans, Judge.

[File endorsement omitted.]

[fol. 102] In United States District Court

[Title omitted]

Response of Respondents—Filed Sept. 26, 1922

Now comes the defendants, and in answer to the petition made by the plaintiff, upon the hearing for injunction before the three Federal Judges, April 24, 1922, and at which time he stated to the

Court that he waived and abandoned all claims in the petition based upon the alienage of J. B. White, say:

1. Defendants admit so much of paragraph 6-a, which alleges:

"That on the first of January, 1919, your orator delivered to John C. White, Robert Skinner and Edward Skinner, as Trustees and Legatees under the Will of J. B. White, all of the securities belonging to said estate which had been held by Henry Clews & Company, of New York, for said Estate, the same being delivered by your orator to said Henry Clews & Company as the agents for said Trustees, and, at the same time, your orator executed and had recorded, October 18, 1919, in the office of the Clerk of Superior Court of Richmond County, Georgia, a written assent to the legacy in said Will, devising the real estate of testator located in the City of Augusta and in Richmond County, Georgia (except as to a plantation in said county known as the Dye Place), to said Trustees under said Will. A list of said real estate as taken from the inventory of said estate being hereunto attached, marked Exhibit I. That with the execution of some few small lots of said real estate heretofore sold by said Trustees from said property known and described as the McKeon property, said Trustees had been in possession of all of said real estate since January 1st, 1919, and are still in possession of same and handling and controlling said property under the terms of the Will of your orator's testator."

But deny that portion in brackets which alleges:

"Except as to a plantation in said county known as the Dye Place,"

and allege that said "Dye Place" was by deed recorded in 9 D's, 549, also conveyed to the residuary legatees and trustees under said will.

[fol. 103] 2. For want of information respondents can neither admit nor deny paragraph 6-b as a whole, which alleges,

"That it is the duty of your orator as executor of said will to protect the title and possession of said trustees in all of said property, including said real estate, and for that purpose and to meet and satisfy all legal claims, and demands including said claims for back taxes against said estate, your orator as executor as aforesaid, after making other transfers to said trustees, retained in his possession as executor, stocks, bonds and cash belonging to said estate of the aggregate value in excess of Three Hundred Thousand ($300,000.00) Dollars, embracing among other securities, 500 shares of capital stock of the Georgia Railroad and Banking Company of the value of One Hundred and Five Thousand ($105,000.00) Dollars, 261 shares of Augusta Factory stock of the value of Ten Thousand ($10,000.00) Dollars, City of Augusta Bonds of the value of Seventy-Five Thousand ($75,000) Dollars, and as cash on deposit in banks in excess of Thirty Thousand ($30,000.00) Dollars, all of which he still has in his possession as such executor. That the issuing of said

tax executions and placing the same upon the tax execution dockets of said county has the effect (illegal though the same be as herein set forth) of making said tax fi. fas. colorable liens upon the records of said Richmond County, Georgia, upon all of said real estate and will constitute a cloud upon the title of all of said real estate."

Except they admit that it is the duty of said executor to "satisfy all legal claims, and demands including said claims for back taxes against said estate."

But respondents say that said orator has no title nor is he in possession of any property upon which said tax executions can possibly cast a cloud, as no cloud can be cast upon the title of personal property, even though he be in possession of the property set out in said paragraph and that while the lien for said taxes attaches to said real estate in the hands of said trustees, respondents assert that there is no duty imposed upon plaintiff to "protect the title and possession of said trustees in all of said property, including said real estate" as when he assented to the legacies, as stated above, the property then passed into said legatees and trustees in as complete a manner as if the same had never been the property of the estate of said J. B. White in the first instance, and therefore respondents deny that "the issuing of said tax executions and placing the same upon the tax execution dockets of said county has the effect (illegal though the same be as herein set forth) of making said tax fi. fas. colorable liens upon the records of said Richmond County, Georgia, upon all of said real estate and will constitute a cloud upon the title of all of said real [fol. 104] estate," but that if such were true, respondents aver that said plaintiff is not the holder of the legal title of said real estate and is not in possession thereof, and therefore cannot be heard to raise the issue of said tax fi. fas. casting a cloud thereon.

3. Respondents deny paragraph 55-a which alleges,

"That said practice and custom of tax assessing officials of the State of Georgia in receiving returns of property and in making assessments thereon for the purpose of state and county taxation during the years from 1911 to 1917 inclusive, and even up to the present time, for the small percentage of actual or market value thereof as hereinbefore set forth has been and is general, systematic and intentional; while the assessments as made by said tax receiver on said securities of your orator's testator were deliberately made with the intention of being at the full pretended market value of said securities but were actually made recklessly at amounts greatly in excess even of the pretended full market value of said securities and were intentionally and discriminatory against the estate of your orator's testator."

4. Further answering same, respondents say, they deny that there has been any systematic, intentional or arbitrary discrimination against plaintiff in said tax assessments, but on the contrary the same were made with full opportunity in the said plaintiff to be heard with reference thereto, and with full knowledge of every step taken

in said assessments. The history thereof is in brief as follows: After the death of said J. B. White, orator's testator in March, 1918, it came to the knowledge of the tax officials of Georgia that said White owned some million and a half dollars worth of stocks and bonds in foreign corporations, which had not been returned for taxation for seven years prior to 1917, which said securities were in the hands of said White's New York agents, whereupon the tax receiver of Richmond County, was directed to proceed to require a return thereof for taxation and was "requested to issue a statutory notice to the executor of the estate, demanding that he make a return of said property for the years 1911 to 1917 inclusive. On June 4, 1918, the tax receiver issued the statutory notice. Before the expiration of the twenty days in which the executor had, under the statute, to make the return demanded, the receiver withdrew the notice. In December, 1918, Richmond County filed a petition for mandamus to require the tax receiver (one of the respondents herein) to assess said property for taxation for the years named, upon the best informa-[fol. 105] tion obtainable, alleging, in addition to the foregoing facts, that the testator was a resident of and domiciled in Richmond County, Georgia, at the time of his death, and that the tax receiver in withdrawing the statutory notice aforesaid was acting against the interest of the County and in the interest of the estate. Subsequently the State of Georgia intervened and was made a party plaintiff in the mandamus proceeding. In response to the mandamus nisi, the tax receiver demurred and answered." And in his answer "He admitted that the testator owned at the time of his death, as shown by the inventory and apprais-ment, the securities aforesaid. He alleged that he did not know, and that he had no satisfactory evidence, that the testator owned the said securities from 1911 to 1917, inclusive, and that it was his official duty, as he conceived it, to act upon reasonably exact knowledge or information; that he did not know whether said securities were liable to taxation by Richmond County in the circumstances aforesaid, and, if taxable, the value thereof. Subsequently Richmond County and the State of Georgia filed a petition in which it was alleged that the executor of J. B. White held said securities, and was vitally interested in the issues involved; that said executor had influenced and prevented the tax receiver from assessing said property, and by his interference with the said receiver had made himself a party in fact to the mandamus proceeding, and prayed that he be made a party upon the record, and be required to raise the question of the taxability of said property and the value thereof in the mandamus proceeding against the receiver." * * * "Thereafter the tax receiver amended his answer and alleged that he had, on June 10, 1919, issued a second notice to the executor, demanding a return of the aforesaid securities for the years 1911 to 1917, inclusive, and that in response to this notice the executor had filed a return. The relators filed an amendment to the petition for mandamus, setting out in detail the information which had been furnished to the receiver, and alleging that the returns as made by the executor were wholly inadequate and did not include the property [fol. 106] sought to be taxed. They prayed that the returns made

by the executor be rejected, and that the receiver be compelled to assess said property as required by law. On June 14, 1919, the case came on before the judge for a hearing upon the pleadings, and the judge orally announced that he would not issue a mandamus absolute, but that he would retain jurisdiction of the case in order to permit counsel for the relators to take the depositions of the New York Bankers. Certain depositions were taken, and in substance they disclosed that the testator owned, during the years 1911 to 1917, inclusive, stocks and bonds of the value of one and a quarter million dollars. This evidence was submitted to the tax receiver, and on July 28, 1919, he rejected the returns as made by the executor, and assessed said stocks and bonds in accordance with such evidence for the years in question. Thereupon the receiver, by amendment to his answer, averred that he had so assessed the property, and prayed that the mandamus absolute be denied." * * * "At the final hearing before the judge on August 1, 1919, the court refused the mandamus absolute and dismissed the petition."

Thereupon this case was carried to the Supreme Court of Georgia, and the decision reported in 150 Ga., 229, Richmond County, et al. v. Steed, tax receiver, et al., was affirmed, and in the judgment of affirmance, the court said, "That while the writ of mandamus may properly command the tax receiver to act, it will not compel the doing of any act in a specified manner, which involves the discretion and judgment of the receiver." * * * And that, "Mandamus will not be granted when it is manifest that the writ would, for any cause, be nugatory or fruitless; nor will it be granted on a mere suspicion or fear, before a refusal to act or a wrongful act done." And that, "The tax receiver had fully complied with the prayers of the petition; that is, he had called upon the executor to make a return of the specific property for the years in question; the executor had made a return, which was rejected by the receiver, and the receiver had assessed the property in accordance with the evidence submitted to him by the plaintiffs. This being true, the [fol. 107] court properly declined to make the writ absolute."

That the foregoing quotations are taken literally from said Supreme Court's decision and are plead by respondents to show that no fraud of any kind, class or character was sought to be practiced upon said plaintiff in the levying of said assessments, and he was fully aware, as stated, of every step taken during the course thereof. And while this court held in that case that said executor could have by consent been made a party to said mandamus proceeding, but upon objections could not be, therefore respondents say that said plaintiff in this case has had every opportunity to raise any issues which he saw fit and could have done so on said occasion but assiduously refused to do so, all of which appears from said supreme court's decision and the record introduced in this court.

That in said petition to make said executor a party, the law firm of which he is a member, Callaway & Howard, appeared for the defendants as will be seen by reference to said supreme court's decision, all of which respondents say refutes any intimation or charge of general systematic and intentional under-valuation of any other

property in said county, and also refutes the charge that said assessments were deliberately and recklessly made with the intention of excessively or fraudulently assessing said property, and that the same were intentionally discriminatory against the estate of said plaintiff's testator, but every step in said assessments show the absolute fairness with which the tax receiver of Richmond County dealt with said Estate, and did not act until he was absolutely convinced of the ownership and market value of the property in question.

Respondents further say that the tax receiver of Richmond County did not have brought to his attention during the years 1911 to 1917, nor does he know of any property that then existed which was not returned for taxation, and if such had been brought to his attention the same would have been taxed in the same manner a was taxed the property of plaintiff's testator.

That the plaintiff or his testator had the right to bring to the [fol. 108] attention of the tax officials, that there was other property owned in Georgia, similar to that which was being taxed and not returned, and in that manner have enforced the taxation of such, but respondents allege that the same was never done.

That if the said J. B. White had made returns of said property during the years 1911 to 1917 inclusive, and the same had been assessed at a figure which he thought was excessive, he would during said years have had the right under the law as it then existed to have submitted such excessiveness to a board of arbitration, and after the passage of the Act of 1913 had he made such returns, he could have then had such assessments referred to the board of equalizers created under said Act of 1913, but, he, White, failed to avail himself of these opportunities during his life, and also his executor after his death, who after having been demanded to make returns of said property failed and refused so to do—failed to value the same for taxation—and placed the entire responsibility upon respondent, tax receiver of Richmond County of ascertaining both the existence and also the fair market value of said property in order to assess the same, which was done as required by the constitution and the laws of the State of Georgia.

That under the law of Georgia every tax payer is required to make a return of his property for taxation and to place the fair market value thereon; that when such return is made and accepted by the tax receiver, the assessment is made at the value thus fixed by the owner. Under this rule each taxpayer is practically his own assessor, and only where the valuation placed upon property is disputed by the tax receiver or where the taxpayer fails altogether to make any returns of his property does it become the duty of the tax receiver to act and assess the same from the best information he can obtain, and respondents say that plaintiff having refused to avail himself of any of the opportunities above stated, is wholly in default and is not now in position to raise the issue that he is denied the right of having his taxes equalized with other honest taxpayers [fol. 109] of the State. Respondents say that if the payment of the taxes in question should result in plaintiff having to pay according

to the fair market value of said property when other taxpayers who returned their property for taxation, may have succeeded in getting their property assessed at less than its value, is a condition due entirely to his own laches and neglect—his own refusal to disclose and return his property and pay taxes thereon, and respondents submit that he cannot now resort to a Federal Court of Equity upon the ground that he is being unconstitutionally discriminated against when the discrimination claimed, if any, has not been brought about by the State or its officers, but has been brought about by his own conduct, and he cannot in this court take advantage of his own wrong

Wherefore Respondents pray that this its amendment be allowed and made a part of its original answer.

Pierce Bros., A. L. Franklin, Wm. K. Miller, Attorneys for Respondents.

Affidavit of C. A. Steed to above paper omitted in printing.

The within amendment allowed this September 21, 1922.

Wm. H. Barrett, U. S. Judge.

[File endorsement omitted.]

[fol. 110] IN UNITED STATES DISTRICT COURT

[Title omitted

OPINION AND DECREE OF THE COURT—Filed Sept. 26, 1922

EVANS, BEVERLY D., Judge:

The above stated cause came on for a hearing before Circuit Judge Alex. C. King, and District Judges Beverly D. Evans and Samuel H. Sibley, on an application for a preliminary injunction, and after hearing evidence and argument, the Judges are of the opinion that the case as made by the pleadings does not fall within Section 266 of the Judicial Code, providing for interlocutory injunctions in certain cases; for the reason that no statute or order of any administrative board is attached on the ground of unconstitutionality.

However, it appears that the assessment of the alleged omitted property belonging to the estate of J. B. White includes shares of stock of National Banks located in the State of New York. These items are not taxable in Georgia, and the collection of a State tax assessed against such shares will be enjoined.

The Act of July 31, 1918, for the collection of taxes due to the State, counties, and municipalities and schools, by delinquents, which provides in Section 5, that the assessment of the Tax Receiver shall be final, unless the persons notified shall raise the question

that it is excessive, when the further procedure shall be by petition in equity in the Superior Court of the County where such property is assessed, impliedly repeals the remedy by arbitration given by prior legislative enactments in cases of delinquent taxpayers.

This Act of 1918 does not provide for a re-assessment in the event the valuation is found to be excessive by the Court, because courts are without power to make an assessment of taxes; the same not being a judicial function.

[fol. 111] It is charged in the bill that the property of this delinquent is the only property in Richmond County which has been assessed at its full market value, and in the assessment of such property the tax officers are attempting to discriminate against this particular delinquent, to his great pecuniary injury. In view of the evidence brought to support this charge, the present status should be preserved until a full and impartial inquiry can be had. Accordingly a temporary injunction is granted, to be effective until the case is disposed of on the merits.

This April 29th, 1922.

Beverly D. Evans, U. S. Judge.

[File endorsement omitted.]

[Endorsed:] U. S. District Court, N. E. Division, Southern District of Ga. E. H. Callaway, as Executor of J. B. White, vs. Chas. S. Bohler, Tax Collector, et al. Opinion & Decree of the Court. Entered & Filed this May 1st, 1922. C. J. Skinner, Jr., D. C.

[fol. 112] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED TO ORIGINAL BILL—Filed Sept. 26, 1922

Now comes E. H. Callaway, Executor of the Estate of J. B. White, Plaintiff in the above stated cause, and moves to amend the original Bill therein, as follows, to-wit:

Amend Paragraph 38 by adding at the end thereof the following:

"And your Orator pleads said decision as res adjudicata as to the legality and validity of said arbitration proceedings and as to the right of your Orator to arbitration under the laws of Georgia, and attaches hereto as Exhibit 'I' the complete record of said cause, consisting of the Bill of Exceptions carrying said decision of the Judge of the Superior Court refusing to enjoin said arbitration proceedings to the Supreme Court of Georgia, which Bill of Exceptions contains a complete copy of the petition and all exhibits thereto, and the Judge's decision refusing an injunction; the decision of the Supreme Court of Georgia therein, and the remittitur from the Supreme Court of Georgia in said cause."

And to amend Paragraph 40 of the Original Bill by adding at the end thereof the following:

"And your Orator pleads said decision of the Superior Court of Richmond County sustaining your Orator's demurrer to said Peti- [fol. 113] tion attacking said award and dismissing said petition, and the decision of the Supreme Court of Georgia affirming the same, as res adjudicata and as conclusively establishing the legality and binding force of said award, and as legally and finally establishing the amounts as returned by said award as the only legal assessments upon which taxes can be collected from the estate of said J. B. White for said years 1911 to 1917, inclusive, and your Orator attaches hereto as Exhibit 'J,' a complete copy of the record in said cause, consisting of the equitable petition in said cause, with all amendments and exhibits thereto, your Orator's demurrer and amended demurrers thereto, the decision of the Superior Court of Richmond County sustaining said demurrer and dismissing said petition, the Bill of Exceptions sued out to the Supreme Court of Georgia to said decision, the decision of the Supreme Court of Georgia thereto, and the remittitur making the same the judgment of the Court.

And to further amend, by adding at the end of Paragraph 53, the following paragraphs:

"53-a. That said Tax Arbitration Act of 1910, in pursuance of which said arbitration was held and said award was made, was expressly enacted by the General Assembly of Georgia for the express purpose of providing a method of assessing taxes in all cases where taxes are authorized by law for any purpose and no adequate provision is made in the Act authorizing the same, or in the general law for giving the taxpayer notice and opportunity to be heard as to the valuation and taxability of his property, subject to such taxation, and thus to afford due process of law to such taxpayers, as required by the Fourteenth Amendment to the Constitution of the United States. That if, as contended by said Defendant tax officials of Richmond County, said Act of 1918, by implication, repealed the Tax Arbitration provisions of said Act of 1910, so far as taxpayers in your Orator's class are concerned, and your Orator's only remedy [fol. 114] where the tax assessments are grossly excessive, as in the present instance, shall be by petition in equity in the Superior Court of the County where the property is assessed, your Orator alleges that said Act of 1918 is unconstitutional and in violation of the Due Process Clause of said Fourteenth Amendment to the Constitution of the United States, and in violation of Paragraph 3, Section 1 or Article 1 of the Constitution of the State of Georgia, which provides that no person shall be deprived of life, liberty or property except by due process of law, for the following reasons:

(a) Because courts of equity in Georgia have no statutory authority to assess property for taxation;

(b) Because the Act of 1918 itself did not confer upon courts of equity in Georgia the power to assess property for taxation;

(c) Because the only power that a court of equity in Georgia has in reference to assessments of property for taxation is to enjoin the assessment or the enforcement thereof.

Therefore, your Orator alleges that if the Act of 1918 by implication repeals the Tax Arbitration Act of 1910, there is no statutory machinery provided by law for the assessment of the property of the estate of your Orator's testator covered by said assessments, and your Orator is deprived of Due Process of Law."

"53-b. Wherefore, your Orator alleges that said Act of 1918, being itself unconstitutional for the reasons hereinbefore stated, did not, and cannot, legally or constitutionally, repeal said Arbitration Act of 1910, and said arbitration proceedings are legally binding upon the Defendants herein and the award of said Arbitrators as entered upon the Tax Digest of the County, was final and conclusive in fixing and determining the amount of taxes for said years which your Orator should be required to pay.

Callaway & Howard, Attys. for Complainant.

[fol. 115] Affidavit of E. H. Callaway to above paper omitted in printing.

The above and foregoing amendment allowed. This Sept. 21, 1922.

(Signed) Wm. H. Barrett, United States Judge.

[fol. 116] **Exhibit I to Amendment**

STATE OF GEORGIA,
Richmond County:

BILL OF EXCEPTIONS

Be it remembered:

That the State of Georgia, in its sovereign capacity, presented its Bill and Restraining Order and In junction to the Honorable Henry C. Hammond, J. S. C. A. C., at Chambers, on September 2, 1919, whereby it sought interlocutory action against E. H. Callaway, in his representative capacity as Executor of James B. White, of said County, and Percy E. May, Charles D. Carr, and Thomas S. Gray, as Arbitrators, sworn under a proceeding as set out in said Petition for the arbitration of the taxing claims of the State in its own behalf and that of subsidiary taxing authorities, against said Estate of White for back taxes for the years 1911 to 1917, both inclusive, upon which Petition said Judge refused to grant any relief or restraining order as therein prayed for, as manifested by his entry thereon, as follows:

"Petition read and considered. It is hereby refused and denied. This 2nd Sep., 1919.

"Henry C. Hammond, J. S. C. A. C."

to which said judgment refusing interlocutory relief Petitioner then and there excepted, a copy of said Petition under which all interlocutory remedy was refused is hereby attached as Exhibit "A".

And now, within the time prescribed by law, comes the Plaintiff, State of Georgia, and excepts to the action of said Judge in refusing to grant the interlocutory relief prayed for, and says that he erred [fol. 117] in so doing, and says that the case as presented in said Petition demanded the relief prayed for, and that it was error to refuse it; that Plaintiff in error was entitled to an order restraining and preventing the said Board of Arbitrators, as constituted, as set out in Petition, from proceeding to hear the matter submitted to it under the submission made by the Tax Receiver, and under the oath of office as taken by two arbitrators, and a different oath by the umpire, Carr.

Wherefore, Petitioner presents this its Bill of Exceptions to the Supreme Court of Georgia, and prays that the same be signed and certified according to law.

Pierce Bros., A. L. Franklin, W. K. Miller, Attorneys for Petitioner. Postoffice Address: Augusta, Georgia.

[fol. 118] STATE OF GEORGIA,
Richmond County:

PETITION OF THE STATE OF GEORGIA

The State of Georgia, in its sovereign capacity, brings this Petition in its behalf and in behalf of Richmond County and the Board of Education of Richmond County, and respectfully shows:

1. That the chief source of revenue of your Petitioner, together with said Richmond County and Board of Education of Richmond County, is derived from taxation.

2. That prior to the 4th day of June, 1918, the Board of Commissioners of Roads and Revenues of Richmond County ascertained that there was a large amount of property subject to taxation belonging to the Estate of J. B. White, which had not been returned for taxation for the years 1911 to 1917, inclusive amounting to $1,300,000, or other large sum, consisting of stocks and bonds in foreign corporations, and choses in action.

3. That the said J. B. White departed this life on the 31st day of March, 1917, testate, leaving as his Executor, E. H. Callaway, of Richmond County, Georgia, who duly probated the will of said White in Richmond County, Georgia, as a domestic will, and filed an inventory of said Estate, as provided by law, in which said inventory a list of said property claimed to be subject to taxation was set out; and that from the Tax Digest of said County it appears that the same had never been returned for taxation nor taxed in Richmond County, the domicile of said J. B. White for said years.

4. That said Richmond County, through its duly authorized attorneys-at-law had this information brought to the attention of C. A. Steed, as Tax Receiver of Richmond County, and that there-
[fol. 119] upon the said C. A. Steed did, on the 4th day of June, 1918, issue the statutory notice directed to E. H. Callaway, as Executor of said J. B. White, demanding that he make a return of the property as set out in an Exhibit attached to said notice and itemized thereon, amounting in value to some $1,300,000, for the years 1911 to 1917, inclusive, that the same might be assessed for taxation.

5. That subsequent to the issuance of said notice by the said Tax Receiver, the said E. H. Callaway, as Executor, by threats and methods of intimidation, brought said Tax Receiver under his influence and caused him to withdraw said notice, and thus relieve the said Executor from making a return thereunder, which notice of withdrawal was just one day prior to the expiration of the twenty days provided by statute in which a return of the property specified therein should have been made.

6. That since the withdrawal of said notice, the said Tax Receiver has been at all times acting under the influence and in behalf of said Executor in an effort to prevent the taxation of said property, and failed and refused to do anything in the premises, and failed to proceed to assess said property for taxation from the best information he could obtain, after the expiration of twenty days therefrom, although he was in possession of ample and proper information upon which assessment might be made.

7. That after the said C. A. Steed had failed to do his legal duty, from the 4th of June, 1918, said Richmond County did, on December 18, 1918, through its duly appointed attorneys-at-law, cause a Petition for mandamus to be filed against the said C. A. Steed, alleging that he had failed and refused to assess the property claimed to be subject to taxation, as provided by law.

8. That subsequent to the filing of said Petition for mandamus, the said Callaway, as Executor, continued to influence the said Tax Re-
[fol. 120] ceiver, and succeeded in having the said Tax Receiver to file a response to the mandamus nisi issued, in which the said Tax Receiver set out only such issues as were beneficial to said Estate.

9. That subsequent to the filing of the mandamus proceedings above referred to, that the personnel of the Board of Commissioners of Roads and Revenues of Richmond County was changed by the expiration of the terms of Hon. H. R. Pund and Asa Rooks, and C. J. Skinner, Sr., and H. C. Boardman were duly elected and the personnel of said Board on January 1, 1919, was as follows: James T. Gardner, Chairman, C. J. Skinner, Sr., H. C. Boardman, F. H. Turner, and M. C. B. Holley.

10. That immediately upon the organization of the Board in January, at the instance and suggestion of the said E. H. Callaway a resolution was introduced which sought to end the said mandamus proceedings and thus relieve said Estate from taxation, as contended

by your Petitioner, the members of said Board voting for same being James T. Gardner, C. J. Skinner, Sr., and H. C. Boardman, who constituted a majority thereof, all of which your Petitioner alleges was an effort on the behalf of said Board to relieve and exempt from taxation the property belonging to the Estate of J. B. White.

11. That in this state of said mandamus proceedings, your Petitioner did, on February —, 1919, file a Petition to intervene in said cause, and was duly made a party Plaintiff therein.

12. That subsequent to said date, Plaintiffs in said cause amended their Petition, and brought to the attention of the Court the affidavits of said E. H. Callaway, as Executor of said J. B. White, and claimed that he was a proper party Defendant in said cause, in that he had interferred and was aiding and directing the said Steed as far as he [fol. 121] could, by furnishing him with facts and matters of defense against the claim of the taxing authorities of said State and County, and had made himself virtually a party to said cause, and that he, for this reason, should be required to come into Court openly upon the record, and raise any issues in said proceedings, and make any defense therein that he was entitled to under the law, and have his rights adjudicated.

13. That the main case came on to be heard on the 14th day of July, 1919, and the said Steed amended his Answer, alleging that he had issued a second notice to said Executor to make a return of property owned by said J. B. White for the years 1911 to 1917, inclusive, and afterwards that the said Callaway had made a return, whereupon Plaintiffs again amended their Petition and set out in substance the returns as made by the said Callaway, which were as follows:

For the year 1917, $350,000; for the year 1916, $48,760; for the year 1915, $31,025; and for the years 1914, 1913, 1912, and 1911, $21,600.

Plaintiff insisted that said returns should be rejected because the said Executor had failed to return the property claimed to be subject to taxation, and that the said Tax Receiver should be compelled to proceed to assess from the information that had been furnished him.

14. That upon a preliminary hearing of said cause, on the 14th day of July, 1919, upon the pleadings and undisputed facts therefrom, the Judge announced that he would not make a final ruling, but that he would continue the same until testimony should be obtained of what property, and the value thereof, was owned by the said J. B. White for the years named and not included in said return, and thereupon counsel for Plaintiffs in said cause proceeded to New York and took the depositions of J. B. Clews, a member of the firm of Henry Clews & Co., Bankers, with whom were deposited the se- [fol. 122] curities of J. B. White, as it appeared from the inventory filed by the Executor of said Estate that said securities were on deposit with the said Henry Clews & Co., and from the testimony of said

J. B. Clews, it developed that the said J. B. White had on deposit with his firm, on the taxable dates of the years 1911 to 1917, inclusive, personal property subject to taxaton in Georgia averaging over $1,300,000 for each year.

15. That the value of said securities on deposit with said Bankers, as shown by the affidavit of experts, was as follows: For the year 1911, $1,012,365.67; for the year 1912, $1,397,671.67; for the year 1913, $1,344,405.83; for the year 1914, $1,556,915.83; for the year 1915, $1,443,500.83; for the year 1916, $1,508,436.00; and for the year 1917, $1,375,408.50.

16. That this testimony was then submitted to the said Tax Receiver, and at the persistent demands of Petitioner's Comptroller-General, said Steed assessed said property for the values shown, including other choses in action owned by the said J. B. White, which said assessments made on the 28th day of July, 1919, were as follows: For the year 1911, $1,038,000.87; for 1912, $1,399,161.67; for 1913, $1,558,300.83; for 1914, $1,548,735.38; for 1915, $1,439,160.83; for 1916, $1,509,936.00; and for 1917, $1,623,567.52.

17. That to the Petition to make said Executor a party, said Executor filed a Demurrer, and the same was sustained by the Judge, on July 29, and the efforts of Petitioner to make him a party so as to bind him with the judgments of said case were refused.

18. That the main case again came on for hearing on the 1st day of August, 1919, whereupon Plaintiffs again amended their Petition, setting out in detail the evidence as to the ownership and value of said property, and the assessment thereof made as aforesaid, and prayed that the mandamus be made absolute, and said assessment [fol. 123] confirmed and held to be binding upon the Estate of said J. B. White, all of which was refused by the Court, whereupon a Bill of Exceptions was sued out to the Supreme Court, where said cause is now pending.

19. That immediately after the making of said assessment against the Estate of White, as hereinbefore set out, on July 28, 1919, the said Tax Receiver notified said E. H. Callaway, as the Executor of the Estate of White, in writing, that he had made said assessment as therein specified, and thereafter, on August 7, 1919, the said Executor presented the said Tax Receiver his demand for arbitration on said assessment as follows:

"Augusta, Ga., August 7th, 1919.

"Hon. Clifford A. Steed, Tax Receiver of Richmond County, Augusta, Georgia.

"In re Estate of J. B. White

"DEAR SIR:

"I am writing as the Executor of the Will of J. B. White, to notify you that I am dissatisfied with the assessments which you made upon

the personal property of the estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916, and 1917, under date of July 28th, 1919, and exercising the privilege given me by law, now within twenty days from receiving the notice from you of said assessments, I hereby request that said assessments be referred to arbitration, as provided by law, and I hereby notify you that the arbitrator chosen and selected by me for such arbitration is Percy E. May.

"Please notify me of the name of your arbitrator as soon as practicable.

"Very truly yours, E. H. Callaway, Executor of the Will of J. B. White."

[fol. 124] 20. That as the taxpayer thus sought for arbitration, and named an arbitrator, the said Tax Receiver appointed Thomas S. Gray as arbitrator.

21. That with two arbitrators thus appointed, the said Tax Receiver, without notice to Petitioner or its counsel, prepared and had signed the tax arbitration submission as called for by said Callaway, Executor, authorizing said Board of Arbitrators to make an assessment of the property in question, and the said arbitrators made an oath in conformity with the act to equalize the system of taxation in Georgia, of August, 1913, Public Laws 123, page 128, a copy of which—submission and oath—is hereto attached as Exhibit "A."

22. That by this act a review of assessment made by the Tax Receiver and County Board of tax assessors is authorized and provided for, and the arbitrators are required to make a just and true assessment of the tax returns and property in question and determine the matter submitted to them according to law, and the justice and equity of the case.

23. That said arbitrators so appointed could not agree on an umpire, and accordingly, such umpire, or third arbitrator, was appointed by the Board of Commissioners of Roads and Revenues of Richmond County in the person of Mr. C. D. Carr, who immediately thereafter took a different oath as umpire or third arbitrator from that which had been subscribed to by the other arbitrators, and different from that required by the said equalization act of 1913.

24. That no hearing has yet been had by said Board thus constituted, and Petitioner contends that it can never hear nor decide the matter in question, for the following, among other, reasons:

1. Because the equalization act of 1913 has no application to, and does not govern, the present controversy and the three arbitrators are not bound by the same obligation.

[fol. 125] 2. Because the assessment made in this instance was made July 28, 1919, by the Tax Receiver pursuant to the act of 1910, pages 22-24, Code 1116D, and written notice thereof immediately given said taxpayer, Callaway, Executor, by said Tax Receiver.

3. That by this act of 1910 the taxpayer is given "the privilege, within twenty days after receiving such notice, to leave the question of the true value to arbitrators"; that is to say, the said taxpayer, E. H. Callaway, as Executor of J. B. White, had the right, after receiving notice from said Tax Receiver, July 28, 1919, of said tax assessment against the Estate of James B. White, at the values hereinbefore mentioned, to contend before a Board of Arbitration that such valuation was not the true value of said property; but the said Executor did not claim this right to arbitrate on said "true value," but claimed the right to arbitrate said action of said Tax Receiver in making said assessment, and requested that said assessment be referred to arbitration.

4. That there is no authority of law to submit the right of said Tax Receiver to make said assessment to arbitration, and there is now nothing to arbitrate, as over twenty days have elapsed from the date said Callaway, Executor, received notice of said assessment of July 28, 1919, and he has not asked for an arbitration of the "true value" of said property as authorized under said act of 1910, nor has any Board of Arbitration been organized thereunder, and the Executor is concluded by the assessment made by the Tax Receiver.

5. Again, because the arbitrators have not taken the proper oath of office, and the Board of Arbitration is illegally organized, and there is no Board, and the said May, Gray, and Carr, arbitrators appointed as aforesaid, have no legal authority whatever to hear and determine any matter that might be submitted to them by said Executor.

[fol. 126] 6. Because, as the right to arbitrate is under the act of 1910, Petitioner charges that said Board did not act within twenty days from August 8, 1919, the date of the appointment of the arbitrator by the Tax Receiver, and the time in which to contest the assessment as made by said Tax Receiver has passed, and said assessment is now binding upon the Estate of J. B. White, as it was the duty of the taxpayer to see that the arbitration demanded by him was held within twenty days from the date of the appointment of the arbitrator by the Tax Receiver, to-wit: from August 8, 1919, the appointment of said Gray by said Tax Receiver.

7. That as neither the act of equalization of 1913, nor the act of 1910 aforesaid, provides or declares how a party to an arbitration shall raise objections to any arbitrator who may be selected as aforesaid, Petitioner is forced to go into equity, to raise its objection to the organization of the Board as hereinbefore specified, as to the personnel of the arbitrators as hereinafter indicated, thus:

8. The Defendant, E. H. Callaway, while he is the Executor of J. B. White, is also an attorney-at-law, engaged in the general practice of his profession in August, Georgia, and is the senior partner in the law firm of Callaway & Howard, and he, for many years before the organization of this firm and since, has been the regular counsel and attorney-at-law of the National Exchange Bank,

of which said P. E. May is the President, and is in constant and daily contact with said President, advising him on all matters of law and equity which might come up from time to time, so much so that the said P. E. May, in his position as President of said Bank, is the client of the said Callaway, and this close, confidential relationship exists between them, and has so existed for a number of years. The same is true of the said C. D. Carr, who is a director in said Bank, and the client of said Callaway, and between him [fol. 127] and said law firm of Callaway & Howard said confidential relationship exists, and said firm are now conducting active litigation in this Court for said C. D. Carr. That said Callaway, who is learned in the law and competent of advising the said May and Carr is thus the confidential adviser of the said Carr and said May and Petitioner says that under such circumstances said Carr and said May are improper persons to be selected to sit as arbitrators in said case. Said Carr, in addition to being the said client of said Callaway, is the partner in business of the son-in-law of the said Callaway. That said Bank is indebted to the Estate of James B. White, taxpayer, as the moneys of said Estate are deposited in said Bank—as Plaintiffs are informed and believe. That under these circumstances there is no legal Board of Arbitration in existence to hear and determine the questions at issue.

25. That Petitioner is without an adequate remedy at law, and unless said arbitration is enjoined thereunder, your Petitioner and the other taxing authorities of said County will suffer irreparable injuries and will be defeated in the collection of a large amount of taxes justly due them.

Wherefore, waiving discovery from the Defendants, and each of them, Petitioner prays that this Honorable Court will *be* its writ of injunction enjoin and restrain Defendants, and each of them, from proceeding to hear and determine the questions submitted to them under said arbitration proceedings as set out in Exhibit "A," hereto attached, and will by its decree adjudge said arbitration proceedings void; and that the said P. E. May and C. D. Carr are not proper persons to sit in said arbitration proceedings; and that said proceedings under said arbitration be restrained and enjoined until final determination by the Supreme Court of the mandamus case hereinbefore referred to, and the effort therein made to make the said E. H. Callaway, Executor, a party; and that such other and [fol. 128] further relief be granted Petitioner that the nature and circumstances of the case require and as to equity and justice may seem just and proper; and that process do issue against E. H. Callaway, in his representative capacity as the Executor of J. B. White, of the said County of Richmond, P. E. May, C. D. Carr, and Thomas S. Gray, requiring them to be and appear at the next Superior Court of said County, to answer the Petition.

Pierce Bros., A. L. Franklin, W. K. Miller, Attorneys for Petitioner.

[fol. 129 & 130] EXHIBIT "A" TO PETITION OF STATE OF GEORGIA —Omitted in printing; identical with exhibits E G & H on side page 41

[fol. 131] Affidavit of Wallace B. Pierce to petition of the State of Georgia omitted in printing.

Petition read and considered. It is hereby refused and denied. This 2nd Sep., 1919.

Henry C. Hammond, J. S. C. A. C.

The foregoing Exhibit "A," contained on fifteen pages, is hereby identified as the original Petition referred to in said Bill of Exceptions, and presented to me on the 2nd day of September, 1919, whereupon I entered the following:

"Petition read and considered. It is hereby refused and denied. This 2nd Sep., 1919.

Henry C. Hammond, J. S. C. A. C."

by the Plaintiff in said cause, and rejected by me as set forth in this Bill of Exceptions.

This 13th day of September, 1919.

Henry C. Hammond, J. S. C. A. C.

[fol. 132] **Exhibit I to Amendment**—Continued

ORDER SETTLING BILL OF EXCEPTIONS

I do certify that the foegoing Bill of Exceptions is true and contains and specifies all the evidence and record material to a clear understanding of the error complained of; and the Clerk of the Superior Court of Richmond County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified, and certify the same as such, and cause the same to be transmitted to the October Term of the Supreme Court, that the errors alleged to have been committed may be considered, and corrected.

This 13th day of September, 1919.

Henry C. Hammond, J. S. C. A. C.

[fol. 133] EXHIBIT I TO AMENDMENT—Continued

IN SUPREME COURT OF GEORGIA

STATE OF GEORGIA

vs.

CALLAWAY, Executor, et al.

OPINION

1. The proceedings substantially complied with the law applicable to the case of a taxpayer who had failed to return his property for taxation, who had been notified by the tax-receiver to make return, who had failed to comply with the notice, and whose property had been assessed by the tax-receiver, and who had accordingly demanded an arbitration. They were not under the tax-equalization law of 1913, which had no application. The oaths to which the arbitrators subscribed were in substance sufficient to comply with Sec. 1100 of the Civil Code.

2. The arbitrators selected were not ineligible by any reason assigned.

3. The court did not err in refusing a pendente-lite injunction.

GILBERT, J.:

1. This is a proceeding to enjoin the arbitration of the valuation of personal property for taxation. It is contended that the arbitrators were illegally proceeding under the tax-equalization law. It may be profitable to set out the procedure, required by our code in such cases. 'When the owner of property has omitted to return the same for taxation at the time and for the years the return should have been made, such owner is required to do so for each year he is delinquent, said return to be made under the same laws, rules and regulations as existed during the year in default.' Civil Code, Sec. 1055. 'When the omitted property is of that class which should have been returned to the tax-receiver of the county, the said tax-receiver shall notify in writing such delinquent, requiring that he shall make a return thereof within twenty days.' Civil Code, Sec. 1057. If such a delinquent refuses to return his property after the notice given, 'it shall' be the duty of the tax-receiver to assess such property for taxation from the best information he can obtain as to its value for the years in default, and notify such delinquent of the valuation, which shall be final, unless the taxpayer raises the question that it is excessive, in which event the fur-[fol. 134] ther procedure shall be the same as provided by law when the value of returned property arbitrated.' Civil Code Sec. 1059. The taxpayer, being dissatisfied with the assessment of the tax-receiver, has the privilege of leaving it to three disinterested persons for arbitration. Civil Code, Sec. 1098. 'Whenever such assessors are

called in, they shall take an oath before the receiver to do justice between the parties at variance touching the true assessment of the tax return.' Civil Code Sec. 1100. The petition shows that the taxpayer had failed to return certain personal property for taxation during the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, inclusive. Pursuant to Civil Code Sec. 1059 the tax-receiver proceeded to assess the property for taxation, from the best information he could obtain as to its value for the years in default, and notified the delinquent of the valuation. Thereupon, within twenty days after receiving the notice, the taxpayer gave notice to the tax-receiver that he was 'dissatisfied with the assessments' and requested that 'said assessments be referred to arbitration as provided by law.' The taxpayer also notified the tax-receiver that he had selected Percy E. May as one of the arbitrators. Thereupon the tax-receiver named as arbitrator Thomas S. Gray. These two arbitrators failing to agree upon a third, the commissioners of roads and revenues of Richmond County appointed C. D. Carr as the third arbitrator. The two arbitrators first named subscribed to an oath that they would 'faithfully and impartially make a true and just assessment of the tax returns and property in question,' and would 'determine the matter submitted to them according to law and the justice and equity of the case.' The oath subscribed by the third arbitrator recited that he would 'impartially determine the matter submitted according to law and the justice and equity of the case.' The Plaintiff insists that the arbitration is void and should be set aside, because it is a proceeding under the tax-equalization law of 1913 (Acts 1913, p. 123); that the [fol. 135] arbitrators took the oath prescribed by the tax-equalization act, and proceeded to make a finding as provided under the equalization law, whereas they should have proceeded under the law of 1910, which provided that the arbitrators should 'find the true value' of the property; and should have taken the oath provided in Sec. 1100 of the Civil Code. We think the contention is untenable. The notice to the taxpayer was given by the tax-receiver as required under the Civil Code Sec. 1057, and the request for arbitration by the taxpayer was sufficiently broad to comply with the requirement of Sec. 1098. The oaths to which the arbitrators subscribed were in substance sufficient to comply with Sec. 1100. A failure to take the oath in the exact words of the Code would not invalidate the proceedings. Nothing on the entire proceeding as alleged in the petition indicated that it was by virtue of the equalization law. The latter could have had no application to the taxation of the property for any of the previous years, but only to the current year. Under the allegations of the petition, therefore, we think it perfectly clear that the tax receiver and the taxpayer intended to comply with the law applicable to the case of the taxpayer who had failed to return his property for taxation, who had been notified by the tax-receiver to make a return, who had failed to comply with the notice, and whose property had been assessed by the tax-receiver, and who had accordingly demanded an arbitration.

2. It is contended that the arbitration is void and should be set aside, because two of the arbitrators were not impartial and were

ineligible. It is insisted that one of these arbitrators was the business partner of a son-in-law of the taxpayer, and that the other arbitrator was the president of the bank of which the taxpayer was the attorney and legal advisor; that because of these facts the two arbitrators were biased in behalf of the taxpayer and were not legally eligible to act. It may be true that the selection made of the third [fol. 136] arbitrator was inadvisable and injudicious, and that the selection made by the taxpayer was of a personal friend. There is nothing in the allegations, however, to show that either of the arbitrators was in fact ineligible because of bias as to conflicting interests in the arbitration.

3. The allegations in regard to the pending suit for mandamus against the tax-receiver need not be discussed, as the questions involved therein show no cause for injunction. Richmond County v. Steed, ante, 229. The court did not err in refusing a pendente-lite injunction, which was the only judgment excepted to, and therefore our ruling herein is confined to that judgment.

Judgment affirmed. All the Justices concur.

[fol. 137] SUPREME COURT OF GEORGIA

JUDGMENT

Atlanta, May 14, 1920.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

STATE OF GEORGIA

v.

E. H. CALLAWAY, Exr., et al.

This case came before this court upon a writ of error from the Superior Court of Richmond County and after argument had, it is considered and adjudged that the judgment of the Court below be affirmed. All the Justices concur.

Bill of Costs, $10.00.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta, Aug. 17, 1920.

I certify that the above is a true extract from the Minutes of the Supreme Court of Georgia, and that Pierce Bros. paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Z. D. Harrison, Clerk. (Supreme Court Seal.)

Filed in office this 19 day of August, 1920.
Geo. B. Pournelle, Deputy Clerk.

STATE OF GEORGIA,
Richmond County:

Clerk's Office, Superior Court

I hereby certify that the foregoing Remittitur in the case therein stated is a true and correct copy of the original on file*d* in this office.

Witness my official signature and the seal of said Court. This 18th day of September, 1922.

Geo. B. Pournelle, Deputy Clerk, Superior Court, Richmond County, Ga. (Superior Court Seal.)

[fol. 138] **Exhibit J to Amendment to Complaint**

No. 1.

Copy of Petition and Exhibits in the following case:

STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Executor of J. B. White; PERCY E. MAY, CHAS. D. Carr, and Thomas S. Gray, Arbitrators; C. A. Steed, Tax Receiver, and Chas. S. Bohler, Tax Collector of Richmond County.

Equitable Petition Filed to the November Term, 1919, of Richmond Superior Court

Filed on the 6th day of September, 1919.

[fol. 139] STATE OF GEORGIA,
Richmond County:

IN SUPERIOR COURT OF RICHMOND COUNTY

SUPPLEMENTAL PETITION OF STATE OF GEORGIA

The State of Georgia, in its sovereign capacity, brings this Petition in its behalf and in behalf of Richmond County and the Board of Education of Richmond County, and respectfully shows:

1. That heretofore, to-wit: September 2, 1919, it presented to Hon. H. C. Hammond, J. S. C. A. C., its Petition for an injunction restraining certain Defendants herein named from proceeding to hear and determine questions presented to them under certain arbitration proceedings, involving the question of back taxes against the Estate

of J. B. White, which his Honor refused, and which is the subject of a separate Bill of Exceptions to the Supreme Court of this State, a copy of which is hereto annexed as Exhibit "A".

2. Petitioner shows that immediately thereafter, on September 2, 1919, the arbitration proceeding then sought to be enjoined was held by the arbitrators, Percy E. May, Charles D. Carr, and Thomas S. Gray, all of Richmond County, Georgia, upon the application of E. H. Callaway, as Executor of J. B. White, on the proceedings set out in the said Petition above referred to, of which this Petition is supplementary.

3. That the umpire, Mr. Carr, announced that the Board was open, and thereupon, after some discussion, Petitioner's counsel, without waiving any rights as heretofore asserted, introduced in evidence before the Board, the assessments against the Estate of J. B. White, made by C. A. Steed, Tax Receiver of Richmond County, Georgia, on July 28, 1919, which appear in said original Petition; also the evidence under which said assessments were arrived at, a copy of which is hereto attached as Exhibit "B-1"; also, the testimony of J. B. Clews as to what property was in his possession belonging to J. B. White, a Brief of which testimony is hereto attached as Exhibit "B-2"; and the affidavits of Messrs. McPherson and Dougal, clerks of the Bankers [fol. 140] Trust Company of New York, showing how said valuation was arrived at, which was the same valuation adopted by the Tax Receiver and set forth in Exhibit "B-1".

4. That thereupon E. H. Callaway, as Executor of White, introduced in evidence sundry tables 11-12, from sundry reports of the Comptroller-General of the State, covering the years 1912, 1914, 1916 and 1918, showing what stocks and bonds, debts, and money were returned for taxation in the various Counties of the State, and particularly in the Counties of Richmond, Fulton, Bibb and Chatham, a statement of which is hereto attached as Exhibit "C-1"; also the affidavit of J. B. Clews to the effect that while J. B. White had on deposit with his firm for the years named the collateral securities listed upon Exhibit "A", as attached to his depositions in said cause, said White was indebted to said firm in large amounts for various years, etc., a brief of which is attached hereto as Exhibit "C-2"; also the affidavit of John W. Dickey, Broker, in Augusta, to the effect that there were large quantities of stocks and bonds in Augusta and neighboring cities which were not returned for taxation, a brief of which is attached as Exhibit "C-3"; also, a report of the Georgia Railroad and Banking Company, showing the amount of bonds outstanding in that institution, a brief of which is attached as Exhibit "C-4"; also, the affidavit of Rufus H. Brown as to the amount of money on deposit in Augusta on the various taxable dates in 1911 to 1917, a brief of which is attached as Exhibit "C-5"; also, the affidavit of E. H. Callaway as to the result of his personal examination of the records of security deeds and mortgages in Richmond County, a brief of which is attached as Exhibit "C-6"; also, a copy of the inventory of the Estate of Benson, a brief of which is attached as Exhibit "C-7"; also, the evidence of Steed, Tax Receiver, a brief of

which is attached as Exhibit "C-8." Said Executor also, over the objection of Plaintiff, introduced a copy of a report of a special tax [fol. 141] commission, composed of himself and others, dated 1919, but which said report is too lengthy to attempt to set out herein, but which Petitioner contends contained nothing of probative value so far as the question at issue before said Arbitration Board was concerned; and also introduced certain resolutions of the Board of Commissioners of Roads and Revenues of Richmond County, which comprised the contract of employment between the County and Pierce Bros., touching the collection of said taxes, showing the compensation as provided for therein; and also a resolution of said Board in which they directed proceedings to be continued in an effort to collect the back taxes in question.

5. That with this evidence from Petitioner, the State, and the taxpayer, Estate of White, which was all the evidence before said Arbitrators, Petitioner's counsel stated to the Arbitrators that the only question which they were called upon to decide was that allowed by the law, to-wit: The true value of the property to be taxed—see Parks' Code, 1116-D, and Act of 1910, page 22—and that they did not have authority to make a new equalizing assessment under the equalizing Act of 1913, page 123, and that this alone was their authority manifested by the request of the Executor of White, the taxpayer, for the Arbitration in his letter to the Board of County Commissioners, requesting them to appoint an umpire under the said Act of 1910, Parks' Code 1116-D, a copy of which letter is attached as Exhibit "D."

6. That counsel for the taxpayer, E. H. Callaway, as Executor of the Estate of J. B. White, contended that this was not the legal issue before the said Board of Arbitrators; that they were equalizing and were to make a just assessment under all the circumstances of the case, and that this was evident by the oath that the arbitrators had taken, under the Act of 1913, page 128. He admitted that there was no evidence to controvert the value of the property as claimed by [fol. 142] Petitioner, and as fixed by the Tax Receiver, but claimed that that was not involved; that the sole issue was what assessment should be made under all the facts and circumstances that would equalize the White Estate with other taxpayers, for, by universal consent, securities of the kind involved were not returned for taxation at more than five to twenty per cent in various counties of the State of Georgia; and that it would be unjust discrimination against the Estate of J. B. White to require it to pay taxes on the full value of its property as assessed by the Tax Receiver; that while there was no contest as to that valuation, he insisted that it would be unjust discrimination to affirm the action of the Tax Receiver to require payment of taxes on that basis, when that rule was not being enforced against other taxpayers in Georgia.

7. In reply Petitioner's counsel took the legal position that the Estate of White could not raise the issue of illegal discrimination before the Board of Arbitration, but that the issue of discrimination

was a legal question which could only be raised by the taxpayer in a bill of equity in the Superior Court, and that the sole issue before the Arbitrators was: What was the "true value" of the property that had been taxed by the Tax Receiver, and which had not been returned for taxation at all, and had paid no taxes, and that if the effect of paying full taxes thereon would discriminate against the Estate of White as to what other taxpayers had paid, such discrimination resulted, or was brought about, by White's own neglect or failure to return the property in question for taxation; that White was in default for the years 1911 to 1917, and the Arbitrators could not make an equalizing assessment for these years on the bases of what other taxpayers had paid, even if evidence had been introduced to show such, which Petitioner contends was not done, and because they had no such authority, and that White was in default and had not made his returns; that such equalization could not now, in September, 1919, be made with justice to other taxpayers who had paid [fol. 143] their taxes, and that White was too late.

8. The hearing being concluded, the Arbitrators themselves went into discussion of the question and determined to assess the Estate of White for the years 1911 to 1917 in the following manner: After making certain corrections in the figures of the Tax Receiver as pointed out by him in his assessment for the years 1911 to 1917, inclusive, they deducted therefrom the indebtedness to Clews for the various years, the National Bank stock and Southwestern Railway stock, and then assessed the estate at twenty-five per cent of the amount left; thus: After making said corrections in the figures for the year 1911, and after deducting said stock and the amount of the indebtedness due by White to said Henry Clews & Co. for this year, they found that $450,977.34 was White's equitable interest in said property, and they then divided this amount by four, and then assessed this estate for 1911 in the sum of $112,744.83, a one-fourth thereof. The same procedure was gone through with for all of the other years in question, by the Arbitrators, 1911 to 1917, inclusive, and the result reached as follows:

For year 1911	$112,744.83
" " 1912	154,550.67
" " 1913	187,927.98
" " 1914	194,138.96
" " 1915	190,202.74
" " 1916	301,183.67
" " 1917	360,813.92

That the Estate of White was thus relieved of seventy-five per cent of even the equitable value as figured by said Arbitrators. And Petitioner alleges that all this was contrary to law, in that said Board constituted itself a Board of Equalizers and Assessors, and assessed the Estate of J. B. White at only twenty-five per cent of the equitable interest that said White had in said securities, and this resulted in an assessment of about eleven per cent of the true market value of the property sought to be taxed.

9. That the result was an entirely new and illegal assessment, and not a finding of the "true value" of the property sought to be taxed, as was required by law under the arbitration.

[fol. 144] 10. That to set aside this illegal assessment as made by said Arbitrators, Petitioner now brings this, its supplementary Petition for Injunction, against the acceptance and enforcement thereof by the Tax Receiver, and the entry by him of said sums upon the tax digest, Petitioner contending that the said arbitration and award are null and void for the reasons set out herein, and in its original Petition, Exhibit "A" hereto, and the following in addition thereto, to-wit:

(1). Because the Arbitrators, or Board of Arbitrators, were illegally constituted; it being called into existence upon the application of the taxpayer Callaway, Executor, for arbitration under Parks' Code, Section 1116-D, Act of 1910, page 22, see Exhibit "D," and yet the Arbitrators were sworn and proceeded to adjudicate under the terms of the equalizing Act of 1913, Public Laws 123, Section 6, when there had been no action whatever against the Estate of White by any County Board of Assessors as therein required, from whose judgment alone was there any appeal to arbitration therein provided for; and Petitioner contends that said act, and the authority given the Arbitrators therein to make an assessment, has no application whatever to the present case; that the Estate of White had not made any returns of the property in question, sought to be taxed and duly assessed by the Tax Receiver for back taxes for 1911 to 1917, and the same had not been considered by any County Board of Assessors, as in the Act of 1913, page 123, required, before there could be any arbitration on the action of said County Board, but the assessment had been made against the Estate of White by the Tax Receiver only, and under the Act of 1910, page 22, as against property of White not returned at all, and not considered by any County Board of Tax Assessors, and the application for arbitration had been under the Act of 1910, page 22, Parks' Code, 1116-D, and Petitioner contends that the whole proceeding was void and illegal, and that said Arbitrators wholly misconceived their legal duty and acted wholly without legal [fol. 145] authority, and in rendering their award as hereinbefore set out, went outside of and beyond all legal authority delegated to them.

(2) Because the Arbitrators failed to return any award as to the true value of the property in question that had been assessed by the Tax Receiver July 28, 1919, from which assessment the taxpayer, H. H. Callaway, as Executor, had appealed to arbitration, as the only question that he could demand to be arbitrated was the "true value" of the property which had been assessed by said Tax Receiver.

(3) Because under the facts and circumstances above set out, the award rendered as against Petitioner's claims for taxes, as stated was a total miscarriage of justice, and was so at variance with the

law and facts of the case as to be against Petitioner, fraudulent in law.

(4) Because none of the evidence introduced before said Board of Arbitrators by the said E. H. Callaway, as Executor of the Estate of White, tended to disprove the values placed upon the property in the assessment made by said Tax Receiver, and raised an illegal issue before said Arbitrators, in that the purport thereof simply presented the issue of discrimination, all of which Petitioner contends was contrary to law, because said Board of Arbitrators had no authority to consider any such question, but that their sole duty was to determine what was the "true value" of the property which had been assessed by said Tax Receiver.

(5) Because said Arbitrators, in returning the award made by them, wholly disregarded their duty in the premises and the rights of your Petitioner and the other taxing authorities of Richmond County, in that they failed and refused to find and return the "true value" of the securities and property which had been assessed by said Tax Receiver, as required by law, and as shown from the undisputed evidence before them; but, on the contrary, assumed the [fol. 146] authority of equalizers or a Court of Equity.

(6) That to permit said award to stand Petitioner charges would be fraud in law against Petitioner and the other taxing authorities named herein, in that the finding of said Board was so insignificantly small that it shows upon its face, bias and prejudice in behalf of the said taxpayer; in other words, Petitioner charges that the undisputed evidence before said Board shows that the actual market value of the property, as assessed by the said Tax Receiver, was nearly ten times more than said assessment as made by the Arbitrators.

11. That C. S. Bohler is the Tax Collector of Richmond County and a resident thereof, whose duty it is to collect all taxes payable in said County and appearing upon the digest thereof, and unless restrained by this Court, Petitioner fears that he will proceed to collect and accept payment of the taxes calculated upon the assessment as made by said Board of Arbitrators hereinabove complained of.

12. That Petitioner has no remedy at law to reach the injustice complained of, and it is forced to bring this Petition in the Court of Equity, and says that it will suffer great loss unless a remedy is granted as hereinafter prayed for.

Wherefore, waiving discovery from the Defendants, and each of them, Petitioner, by this, its supplemental Petition, prays as in its original Petition, Exhibit "A," and that said submission and assessment by the said Arbitrators be set aside and decreed null and void; and that, pending the final adjudication of questions herein raised, C. A. Steed, as Tax Receiver of Richmond County, be enjoined and restrained from placing said assessment, as made by said Board, upon

the digest of said County; that said C. S. Bohler, as Tax Collector, be restrained from collecting any taxes upon the assessment as made by said Arbitrators; and that such other and further relief be granted Petitioner as the nature and circumstances of the case re- [fol. 147] quire and to the Court would seem meet; and that process issue requiring E. H. Callaway, in his representative capacity as Executor of J. B. White, the taxpayer, and Percy E. May, Charles D. Carr, and Thomas S. Gray, Arbitrators, and C. A. Steed, as Tax Receiver of Richmond County, and Charles S. Bohler, as Tax Collector of Richmond County, Georgia, to be and appear at the next Superior Court of Richmond County, Georgia, to answer your Petitioner. And Petitioner will ever pray.

Pierce Bros., A. L. Franklin, W. K. Miller, Attorneys for Petitioner.

[fol. 148] EXHIBIT A TO SUPPLEMENTAL PETITION

IN SUPERIOR COURT OF RICHMOND COUNTY

Original Petition of State of Georgia

STATE OF GEORGIA,
Richmond County:

The State of Georgia, in its sovereign capacity, brings this Petition in its behalf and in behalf of Richmond County and the Board of Education of Richmond County, and respectfully shows:

1. That the chief source of revenue of your Petitioner, together with said Richmond County and Board of Education of Richmond County, is derived from taxation.

2. That prior to the 4th day of June 1918, the Board of Commissioners of Roads and Revenues of Richmond County ascertained that there was a large amount of property subject to taxation belonging to the Estate of J. B. White, which had not been returned for taxation for the years 1911 to 1917, inclusive, amounting to $1,300,000, or other large sum, consisting of stocks and bonds in foreign corporations, and choses in action.

3. That the said J. B. White departed this life on the 31st day of March 1917, testate, leaving as his Executor, E. H. Callaway, of Richmond County, Georgia, who duly probated the will of said White in Richmond County, Georgia, as a domestic will, and filed an inventory of said estate, as provided by law, in which said inventory a list of said property claimed to be subject to taxation was set out; and that from the Tax Digest of said County it appears that the same had never been returned for taxation nor taxed in Richmond County, the domicile of said J. B. White for said years.

4. That said Richmond County, through its duly authorized attorneys-at-law had this information brought to the attention of

C. A. Steed, as Tax Receiver of Richmond County, and that thereupon the said C. A. Steed, did, on the 4th day of June, 1918, issue the statutory notice directed to E. H. Callaway as Executor of said J. B. White, demanding that he make a return of the property as set out in an Exhibit attached to said notice and itemized thereon, amounting in value to some $1,300,000, for the years 1911 to 1917, inclusive, that the same might be assessed for taxation.

[fol. 149] 5. That subsequent to the issuance of said notice by the said Tax Receiver, the said E. H. Callaway, as Executor, by threats and methods of intimidation, brought said Tax Receiver under his influence and caused him to withdraw said notice, and thus relieve the said Executor from making a return thereunder, which notice of withdrawal was just one day prior to the expiration of the twenty days provided by statute in which a return of the property specified therein should have been made.

6. That since the withdrawal of said notice, the said Tax Receiver has been at all times acting under the influence and in behalf of said Executor in an effort to prevent the taxation of said property, and failed and refused to do anything in the premises, and failed to proceed to assess said property for taxation from the best information he could obtain, after the expiration of twenty days therefrom, although he was in possession of ample and proper information upon which assessment might have been made.

7. That after the said C. A. Steed had failed to do his legal duty, from the 4th of June, 1918, said Richmond County did, on December 18, 1918, through its duly appointed attorneys-at-law cause a Petition for mandamus to be filed against the said C. A. Steed, alleging that he had failed and refused to assess the property claimed to be subject to taxation, as provided by law.

8. That subsequent to the filing of said Petition for mandamus, the said Callaway, as Executor, continued to influence the said Tax Receiver, and succeeded in having the said Tax Receiver to file a response to the mandamus nisi issued, in which the said Tax Receiver set out only such issues as were beneficial to said Estate.

9. That subsequent to the filing of the mandamus proceedings above referred to, that the personnel of the Board of Commissioners of Roads and Revenues of Richmond County was changed by the expiration of the terms of Hon. H. R. Pund and Asa Rooks, and C. J. Skinner, Sr., and H. C. Boardman were duly elected and the personnel of said Board on January 1, 1919, was as follows: James [fol. 150] T. Gardner, Chairman, C. J. Skinner, Sr., H. C. Boardman, F. H. Turner and M. C. B. Holley.

10. That immediately upon the organization of the Board in January, at the instance and suggestion of the said E. H. Callaway, a resolution was introduced which sought to end the said mandamus proceedings and thus relieve said Estate from taxation, as contended by your Petitioner, the members of said Board voting for same be-

ing James T. Gardner, C. J. Skinner, Sr., and H. C. Boardman, who constituted a majority thereof, all of which your Petitioner alleges was an effort on the behalf of said Board to relieve and exempt from taxation the property belonging to the Estate of J. B. White.

11. That in this state of said mandamus proceedings, your Petitioner did, on February —, 1919, file a Petition to intervene in said cause, and was duly made a party Plaintiff therein.

12. That subsequent to said date, Plaintiffs in said cause amended their Petition, and brought to the attention of the Court the affidavits of said E. H. Callaway, as Executor of said J. B. White, and claimed that he was a proper party Defendant in said cause, in that he had interfered and was aiding and directing the said Steed as far as he could, by furnishing him with facts and matters of defense against the claim of the taxing authorities of said State and County, and had made himself virtually a party to said cause, and that he, for this reason, should be required to come into Court openly upon the record, and raise any issues in said proceedings, and make any defense therein that he was entitled to under the law, and have his rights adjudicated.

13. That the main case came on to be heard on the 14th day of July, 1919, and the said Steed amended his Answer, alleging that he had issued a second notice to said Executor to make a return of property owned by said J. B. White for the years 1911 to 1917, inclusive, and afterwards that the said Callaway had made a return, whereupon Plaintiffs again amended their petition and set out in [fol. 151] substance the returns as made by the said Callaway, which were as follows:

For the year 1917, $250,000; for the year 1916, $48,760; for the year 1915, $31,025; and for the years 1914, 1913, 1912 and 1911, $21,600.

Plaintiff insisted that said returns should be rejected because the said Executor had failed to return the property claimed to be subject to taxation, and that the said Tax Receiver should be compelled to proceed to assess from the information that had been furnished him.

14. That upon a preliminary hearing of said cause, on the 14th day of July, 1919, upon the pleadings and undisputed facts therefrom the Judge announced that he would not make a final ruling, but that he would continue the same until testimony should be obtained of what property, and the value thereof, was owned by the said J. B. White for the years named and not included in said return, and thereupon counsel for Plaintiffs in said cause proceeded to New York and took the depositions of J. B. Clews a member of the firm of Henry Clews & Co., Bankers, with whom were deposited the securities of J. B. White, as it appeared from the inventory filed by the Executor of said Estate that said securities were on deposit with the said Henry Clews & Co., and from the testimony of said J. B. Clews it developed that the said J. B. White had on deposit with his firm,

on the taxable dates of the years 1911 to 1917, inclusive, personal property subject to taxation in Georgia averaging over $1,300,000, for each year.

15. That the value of said securities on deposit with said Bankers, as shown by the affidavit of experts, was as follows: For the year 1911, $1,012,366.67; for the year 1912, $1,397,671.67; for the year 1913, $1,344,405.83; for the year 1914, $1,556,915.83; for the year 1915, $1,443,500.83; for the year 1916, $1,508,436.00; and for the year 1917, $1,375,408.50.

16. That this testimony was then submitted to the said Tax Re- [fol. 152] ceiver, and at the persistent demands of Petitioner's Comptroller General, said Steed assessed said property for the values shown, including other choses in action owned by the said J. B. White, which said assessments made on the 28th day of July, 1919, were as follows: For the year 1911, $1,038,000.87; for 1912, $1,399,161.67; for 1913, $1,558,300.83; for 1914, $1,548,735.38; for 1915, $1,439,160.83; for 1916, $1,509,936.00; and for 1917, $1,623,567.52.

17. That to the Petition to make said Executor a party, said Executor filed a Demurrer, and the same was sustained by the Judge, on July 29, and the efforts of Petitioner to make him a party so as to bind him with the judgments of said case were refused.

18. That the main case again came on for hearing on the 1st day of August, 1919, whereupon Plaintiffs again amended their Petition, setting out in detail the evidence as to the ownership and value of said property, and the assessment thereof made as aforesaid, and prayed that the mandamus be made absolute, and said assessment confirmed and held to be binding upon the Estate of said J. B. White, all of which was refused by the Court, whereupon a Bill of Exceptions was sued out to the Supreme Court, where said cause is now pending.

19. That immediately after the making of said assessment against the Estate of White, as hereinbefore set out, on July 28, 1919, the said Tax Receiver notified said E. H. Callaway as the Executor of the Estate of White, in writing, that he had made said assessment as therein specified, and thereafter, on August 7, 1919, the said Executor presented the said Tax Receiver his demand for arbitration on said assessment as follows:

"Augusta, Ga., August 7th, 1919.

"Hon. Clifford A. Steed, Tax Receiver of Richmond County, Augusta, Georgia.

"In re Estate of J. B. White

"DEAR SIR:

"I am writing as the Executor of the Will of J. B. White to notify [fol. 153] you that I am dissatisfied with the assessments which you made upon the personal property of the estate of J. B. White for the

years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, under date of July 28th, 1919, and exercising the privilege given me by law, now within twenty days from receiving the notice from you of said assessments, I hereby request that said assessments be referred to arbitration, as provided by law, and I hereby notify you that the arbitrator chosen and selected by me for such arbitration is Percy E. May.

"Please notify me of the name of your arbitrator as soon as practicable.

Very truly yours, E. H. Callaway, Executor of the Will of J. B. White."

20. That as the taxpayer thus sought for arbitration, and named an arbitrator, the said Tax Receiver appointed Thomas S. Gray as arbitrator.

21. That with two arbitrators thus appointed, the said Tax Receiver, without notice to Petitioner or its counsel, prepared and had signed the tax arbitration submission as called for by said Callaway, Executor, authorizing said Board of Arbitrators to make an assessment of the property in question, and the said arbitrators made oath in conformity with the act to equalize the system of taxation in Georgia, of August, 1913, Public Laws 123, page 128, a copy of which—submission and oath—is hereto attached as Exhibit "A."

22. That by this act a review of assessment made by the Tax Receiver and County Board of tax assessors is authorized and provided for, and the arbitrators are required to make a just and true assessment of the tax returns and property in question and determine the matter submitted to them according to law, and the justice and equity of the case.

23. That said arbitrators so appointed could not agree on an umpire, and accordingly, such umpire, or third arbitrator, was appointed by the Board of Commissioners of Roads and Revenues of Richmond County in the person of Mr. C. D. Carr, who immediately thereafter took a different oath as umpire or third arbitrator from that which had been subscribed to by the other arbitrators, and different from [fol. 154] that required by the said equalization act of 1913.

24. That no hearing has yet been had by said Board thus constituted, and Petitioner contends that it can never hear nor decide the matter in question, for the following, among other, reasons:

1. Because the equalization act of 1913 has no application to, and does not govern, the present controversy and the three arbitrators are not bound by the same obligation.

2. Because the assessment made in this instance was made July 28, 1919, by the Tax Receiver pursuant to the act of 1910, pages 22-24, Code 1116-D, and written notice thereof immediately given said taxpayer, Callaway, Executor, by said Tax Receiver.

3. That by this act of 1910 the taxpayer is given "the privilege, within twenty days after receiving such notice, to leave the question of the true value to arbitrators"; that is to say, the said taxpayer, E. H. Callaway, as Executor of J. B. White had the right, after receiving notice from said Tax Receiver, July 28, 1919, of said tax assessment against the Estate of James B. White, at the values hereinbefore mentioned, to contend before a Board of Arbitration that such valuation was not the true value of said property; but the said Executor did not claim this right to arbitrate on said "true value," but claimed the right to arbitrate said action of said Tax Receiver in making said assessment, and requested that said assessment be referred to arbitration.

4. That there is no authority of law to submit the right of said Tax Receiver to make said assessment to arbitration, and there is now nothing to arbitrate, as over twenty days have elapsed from the date said Callaway, Executor, received notice of said assessment of July 28, 1919, and he has not asked for an arbitration of the "true value" of said property as authorized under said Act of 1910, [fol. 155] nor has any Board of Arbitration been organized thereunder, and the Executor is concluded by the assessment made by the Tax Receiver.

5. Again, because the arbitrators have not taken the proper oath of office, and the Board of Arbitration is illegally organized, and there is no Board, and the said May, Gray and Carr arbitrators appointed as aforesaid, have no legal authority whatever to hear and determine any matter that might be submitted to them by said Executor.

6. Because, as the right to arbitrate is under the Act of 1910, Petitioner charges that said Board did not act within twenty days from August 8, 1919, the date of the appointment of the arbitrator by the Tax Receiver, and the time in which to contest the assessment as made by said Tax Receiver has passed, and said assessment is now binding upon the Estate of J. B. White, as it was the duty of the taxpayer to see that the arbitration demanded by him was held within twenty days from the date of the appointment of the arbitrator by the Tax Receiver, to-wit: from August 8, 1919, the appointment of said Gray by said Tax Receiver.

7. That as neither the act of equalization of 1913, nor the act of 1910 aforesaid, provides or declares how a party to an arbitration shall raise objections to any arbitrator who may be selected as aforesaid, Petitioner is forced to go into equity, to raise its objection to the organization of the Board as hereinbefore specified, as to the personnel of the arbitrators as hereinafter indicated, thus:

8. The Defendant, E. H. Callaway, while he is the Executor of J. B. White, is also an attorney-at-law, engaged in the general practice of his profession in Augusta, Georgia, and is the senior partner in the law firm of Callaway & Howard, and he, for many years before the organization of this firm and since, has been the regular

counsel and attorney-at-law of the National Exchange Bank, of [fol. 156] which said P. E. May is the President, and is in constant and daily contact with said President, advising him on all matters of law and equity which might come up from time to time, so much so that the said P. E. May, in his position as President of said Bank, is the client of the said Callaway, and this close, confidential relationship exists between them, and has so existed for a number of years. The same is true of the said C. D. Carr, who is a director in said Bank, and the client of said Callaway, and between him and said law firm of Callaway & Howard said confidential relationship exists, and said firm are now conducting active litigation in this Court for said C. D. Carr. That said Callaway, who is learned in the law and competent of advising the said May and Carr is thus the confidential advisor of the said Carr and said May and Petitioner says that under such circumstances said Carr and said May are improper persons to be selected to sit as arbitrators in said case. Said Carr, in addition to being the said client of said Callaway, is the partner in business of the son-in-law of the said Callaway. That said Bank is indebted to the Estate of James B. White, taxpayer, as the moneys of said Estate are deposited in said Bank,—as Plaintiffs are informed and believe. That under these circumstances there is no legal Board of Arbitration in existence to hear and determine the questions at issue.

25. That Petitioner is without an adequate remedy at law, and unless said arbitration is enjoined thereunder, your Petitioner and the other taxing authorities of said County will suffer irreparable injuries and will be defeated in the collection of a large amount of taxes justly due them.

Wherefore, waiving discovery from the Defendants, and each of them, Petitioner prays that this Honorable Court will by its writ of injunction enjoin and restrain Defendants, and each of them, from proceeding to hear and determine the questions submitted to them under said arbitration proceedings as set out in Exhibit "A," hereto attached, and will by its decree adjudge said arbitration [fol. 157] proceedings void; and that the said P. E. May and C. D. Carr are not proper persons to sit in said arbitration proceedings; and that said proceedings under said arbitration be restrained and enjoined until final determination by the Supreme Court of the mandamus case hereinbefore referred to, and the effort therein made to make the said E. H. Callaway, Executor, a party; and that such other and further relief be granted Petitioner that the nature and circumstances of the case require and as to equity and justice may seem just and proper; and that process do issue against E. H. Callaway, in his representative capacity as the Executor of J. B. White, of the said County of Richmond, P. E. May, C. D. Carr, and Thomas B. Gray, named as arbitrators, all of Richmond County, Georgia, requiring them to be and appear at the next Superior Court of said County to answer the Petition.

Pierce Bros., A. L. Franklin, W. K. Miller, Attorneys for Petitioner.

[fols. 158 & 159] Exhibit "A" to Above Petition—Omitted in printing; identical with Exhibits E, G, and H, on side page 41

[fol. 160] Affidavit of W. B. Pierce to original petition of state of Georgia omitted in printing.

Petition read and considered. It is hereby refused and denied.

This 2nd Sept., 1919.

Henry C. Hammond, J. S. C. A. C.

[fol. 161] Exhibit "B-1" to Original Petition of State of Georgia

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for the year 1911, and in answer to question 19, as to the market value of stocks and bonds in non-resident corporations, he answered $15,600, and as to the value of notes and accounts, question 18, he replied $6,000, making a total of $21,600 for 1911.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1911 is set out in a statement annexed hereto, and was of the market value of $1,003,866.87, and the property of James B. White is assessed for taxes for the year 1911 in the sum of $1,003,866.87. This is entered on the digest for 1911, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 162] Exhibit "B-1" to Original Petition of State of Georgia

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for the year 1912, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered $15,600, and as to the value of notes and accounts, question 18, he replied $6,000, making a total of $21,600 for the year 1912.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1912 is set out in a statement annexed hereto, and was of the market value of $1,399,161.67, and the property of James B. White is assessed for taxes for the year 1912 in the sum of $1,399,161.67. This is entered on the digent for 1912, and tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 163] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for 1913, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered $15,600, and as to the value of notes and accounts, question 18, he replied $6,000, making a total of $21,600 for the year 1913.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1913 is set out in a statement annexed hereto, and was of the market value of $1,558,300.83, and the property of James B. White is assessed for taxes for the year 1913 in the sum of $1,558,300.83. This is entered on the digest for 1913, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 164] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for 1914, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered $15,600, and as to the value of notes and accounts, question 18, he replied $6,000, making a total of $21,600 for 1914.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1914 is set out in a statement annexed hereto, and was of the market value of $1,548,735.38, and the property of James B. White is assessed for taxes for the year 1914 in the sum of $1,548,735.38. This is entered on the digest for 1914, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 165] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for 1915, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered $1,575, and as to the value of notes and accounts, question 18, he replied $29,450, making a total of $31,025 for 1915.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1915 is set out in a statement annexed hereto, and was of the market value of $1,439,160.83, and the property of James B. White is assessed for taxes for

the year 1915, in the sum of $1,439,160.83. This is entered on the digest for 1915, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 166] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his return for 1916, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered $9,130, and as to the value of notes and accounts, question 18, he replied $39,450, making a total of $48,760 for 1916.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1916 is set out in a statement annexed hereto, and was of the market value of $1,509,936, and the property of James B. White is assessed for taxes for the year 1916 in the sum of $1,509,936. This is entered on the digest for 1916, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 167] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Upon the printed blank required by law for taxpayers to make their returns, containing the questions and answers required by Code 1087 for taxpayers, E. H. Callaway, as Executor of J. B. White, on June 28, 1919, made his returns, and in answer to question 17, as to the market value of stocks and bonds in non-resident corporations, he answered, with question 18 as to the value of notes and accounts, both at $250,000 for 1917.

Upon this return the Tax Receiver made the following entry of assessment:

"The return as made by E. H. Callaway, as Executor of James B. White, of Richmond County, Georgia, is rejected. It must be increased by omitted property, to-wit: All the taxable personal property of James B. White, particularly that in the hands of Henry Clews & Co. This omitted taxable property in 1917 is set out in a statement annexed hereto, and was of the market value of $1,623,567.52, and the property of James B. White is assessed for taxes for the year 1917 in the sum of $1,623,567.52. This is entered on the digest for 1917, and the tax collector will proceed to collect the same according to law.

"This 28 July, 1919.

"C. A. Steed, Tax Receiver Richmond Co., Georgia."

[fol. 168] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Marion H. McPherson, who being sworn says that he is a Loan Clerk in the Loan Department of Bankers Trust Company, No. 16 Wall Street, Borough of Manhattan, City of New York, and Robert W. Dougal, who being also severally sworn says that he is a Loan Clerk in the Loan Department of said Trust Company, and that the duties of both of the above named are to figure the value of the securities deposited as collateral for loans with said Trust Company, and that each deponent, upon swearing for himself, says, that jointly with the other he has examined Exhibit "A," hereto attached, which is a transcript from the books of Henry Clews & Company, of the account of James B. White, as attached to the deposition of J. B. Clews in the case of the State of Georgia and County of Richmond against C. A. Steed as Tax Receiver; that what appears upon said Exhibit "A" in black is a list of the securities, and what appears in red ink thereon is the market value of said securities according to The Commercial and Financial Chronicle, which is the recognized standard publication in the City of New York showing the market quotations each day on stocks and bonds, both listed and unlisted, in the City of New York, and is duly received in the Courts of New York as evidence of the value of the securities quoted therein on the days named, and that deponents, at the request of Benjamin E. Pierce and W. K. Miller, counsel for the plaintiffs in said case, have examined the files of said publication and calculated the market value of the securities set out in Exhibit "A," and place the result opposite the same in red ink, said examination being as of the dates specified, thus:

Said securities on February 1, 1911, were of the market value of	$1,012,366.67
Said securities on January 31, 1912, were of the market value of	1,397,671.67
Said securities on January 1, 1913, were of the market value of	1,344,405.83

[fol. 169] Said securities on January 1, 1914, were of the market value of..... 1,556,915.83
Said securities on January 1, 1915, were of the market value of..... 1,443,500.83
Said securities on January 1, 1916, were of the market value of..... 1,508,436.00
Said securities on January 1, 1917, were of the market value of..... 1,375,408.50

Deponents are entirely disinterested, and have no interest in the case in question.

Marion H. McPherson, Robt. W. Dougal.

Sworn to before me this 24th day of July, 1919. W. Weeks, Notary Public, New York County, No. 115. Register 1127. Com. Expires March 30, 1921.

EXHIBIT "A" TO MCPHERSON'S AFFIDAVIT

(Please examine and report)

New York, July 21, 1919.

James B. White, c/o Am. Exp. Co., 6 Haymarket St., London, Eng., in Account Current with Henry Clews & Co., 11, 13, 15, & 17 Broad Street.

Date of delivery		Amount	
Dr.			Cr.
Feb. 1, 1911.	To balance	$478,877.33	
	Long 25 M N. Y. City 4% (1958)		$24,750.00
	200 " 4% (1959)		200,000.00
	300 Atl. Coast Line Ctf. of Indebt. 4%		300.00
	7 M Atchison 4% (1955)		7,606.67
	3 " " 5% (1917)		3,325.00
	2,000 Reading		157,000.00
	900 Nor. Pacific		111,600.00
	600 So. Pacific		71,400.00
	300 Lou. & Nashville		43,500.00
	200 Ct. Nor. Pr.		25,800.00
	300 Ont. & Western		12,600.00
	200 Un. Pacific		35,400.00
	200 " " Pr.		18,600.00
	100 Atl. Coast Line		12,300.00
	100 Norf. & Western		10,700.00
	100 Va. Chem. Pr.		12,500.00

Date of delivery		Amount	
Dr.			Cr.
[fol. 170]	200 N. Y. Central		22,600.00
	600 Atchison		63,600.00
	100 " Pr.		10,300.00
	115 Natl. Park Bank		41,400.00
	100 " Bank of Com.		20,600.00
	25 Stand. Oil		15,550.00
	3 Lou. Prop.		300.00
	105 So. W. Ry. of Ga.		10,500.00
	615 Balt. & Ohio		67,035.00
	100 So. Rwy. Pr.		6,500.00
	200 R. Isl. Co. N. J.		6,600.00
			$1,012,366.67
Jany. 31, 1912.	To balance	$707,294.00	
	10 M Cent. of Ga. Inc. 5%		$10,000.00
	Long 200 M N. Y. City 4% (1959)		202,000.00
	25 " 4% (1958)		27,500.00
	300 Atl. Coast Line 4% Ctf. of Ind.		300.00
	7 M Atch. 4% (1955) ..		7,396.67
	3 M " 5% (1917) ..		3,265.00
	2,000 Reading		153,000.00
	1,300 Nor. Pacific		149,000.00
	1,000 So. Pacific		107,000.00
	300 Lou. & Nashville		45,000.00
	1,000 Un. Pacific		161,000.00
	200 " " Pr.		18,400.00
	100 Atl. Coast Line Pr.		13,500.00
	100 Norfolk		10,700.00
	100 Va. Chem. Pr.		11,900.00
	1,000 Atch.		103,600.00
	100 " Pr.		10,300.00
	115 Nl. Park Bank		41,975.00
	100 Nl. Bank of Com.		19,700.00
	3 Lou. Prop.		300.00
	105 So. W. Ry. of Ga.		10,500.00
	615 Balt. & Ohio		63,960.00
	100 So. Ry. Pr.		6,900.00
	200 Rock Isl. Co. N. J.		4,600.00
	500 Amal. Cop.		30,500.00
	200 N. Y. Central		22,000.00
	1,000 Penn.		61,500.00
	500 Gt. Nor. Pr.		64,000.00
	300 Ont. & Western		11,100.00
	25 Standard Oil of N. J. ..		16,875.00

1. 266,517 / 963,383 Atlantic Ref. Co.

29875 / 983,383 Borne Scrymser Co.

5. 82935 / 983,383 Buckeye Pipe Line.

69425 / 983,383 Chesebrough Mfg. Co. Cons.

62325 / 983,383 Colonial Oil Co.

74875 Continental Oil Co.

1. 516,542 Crescent Pipe Line.

249,625 Cumberland Pipe Line.

[fol. 171]

1. 266,467 Eureka Pipe Line.

421,875 Galena Signal O. Pr.

1. 414,592 " " " Com.

2. 533,084 Indiana Pipe Line.

12. 925,229 Natl. Transit Co.

1. 266,467 N. Y. " "

1. 16467 Northern Pipe Line.

15. 249,105 Ohio Oil Co.

4. 565,818 The Prairie Oil & G. Co.

	124,850	Solar Refg. Co.
2.	533,084	So. Pipe Line Co.
	624,875	South Penn Oil Co.
	874,900	South West Penn. Pipe Line.
6.	349,577	Stand. Oil Co. of Cal.
	249,750	Stand. " " " Ind.
	249,825	" " " " Kans.
	249,300	" " " " Ky.
	149,875	" " " " Neb.
3.	799,751	" " " " N. Y.
	874,850	" " " " Ohio.
	24850	Swan & Finch Co.
3.	49676	Union Tank Line Co.
	624,950	Vacuum Oil Co.
	178,575	Washington Oil Co.
	68,675	Waters Pierce Oil Co.
	Standard Oil	10,000.00
		$1,397,671.67

Date of delivery		Amount	
Dr.			Cr.
Jany. 1, 1913.	To balance	$520,626.89	
	Long 10 M Cent. Ga. Inc. 5% .		10,000.00
	25 M N. Y. City Reg. 4% (1958)		23,916.67
	200 M N. Y. City Reg. 4% (1959)		191,333.33
	300 Atlantic Coast Line ...		300.00
	7 M Atch. 4% (1955) ..		7,373.33
	3 M " 5% (1917) ..		3,161.50
	2,000 Reading		165,000.00
	1,300 No. Pacific		157,000.00
	1,000 So. Pacific		106,000.00
	300 Lou. & Nash.		42,300.00
	1,000 Un. Pacific		160,000.00
	200 " " Pr.		18,200.00
	100 Atl. Coast Line		13,100.00
[fol. 172]			
	100 Norf. & W.		11,200.00
	100 Va. Chem. Pref.		11,200.00
	1,000 Atchison		105,000.00
	115 Nl. Park Bank		41,860.00
	100 " Bank of Com.		19,700.00
	3 Lou. Prop.		300.00
	105 So. W. Rwy. of Ga.		10,500.00
	615 Balt. & Ohio		63,960.00
	100 So. Rwy. Pr.		8,000.00
	200 R. Isl. Co. N. J.		4,600.00
	200 N. Y. Cent.		21,600.00
	1,000 Penn.		60,000.00
	500 Gt. Nor. Pr.		65,000.00
	300 Ont. & W.		9,300.00
	100 Atch. Pr.		9,900.00
	Rts. 500 Gt. Nor. Pr.		1,000.00
	" " Atl. Coast Line		300.00
			$1,344,405.83
Jany. 1, 1914.	To Balance	$712,840.80	
	10 M Cent. of Ga. Inc. 5%		10,000.00
	Long 25 M N. Y. City Reg. 4% (1958)		23,916.00
	200 M N. Y. City Reg. 4% (1959)		193,333.33
	300 Atl. Coast Line		300.00
	7 M Atch. 4% (1955) ..		6,603.33
	3 M " 5% (1917) ..		3,912.50

Date of delivery		Amount	
Dr.			Cr.
	18 M B. & Ohio conv. 4½% (1933)		16,650.00
	2,000 Reading		168,000.00
	1,300 No. Pacific		141,700.00
	1,000 So. Pacific		88,000.00
	200 Un. Pacific Pr.		17,000.00
	100 Atl. Coast Line		4,600.00
	500 Norf. & W.		51,000.00
	100 Va. Chem. Pr.		9,600.00
	1,000 Atchison		93,000.00
	115 Nl. Park Bank		40,020.00
	300 Lou. & Nash.		39,900.00
	1,000 Un. Pacific		155,000.00
	100 Nl. Bank of Com.		17,000.00
	3 Lou. Prop.		300.00
	105 So. W. Ry. of Ga.		10,500.00
	1,000 Balt. & Ohio		92,000.00
	100 So. Rwy. Pr.		7,600.00
	200 Rock Isl. Co. N. J.		2,600.00
	500 N. Y. Cent.		46,000.00
	1,100 Penn.		59,400.00
	500 Gt. Nor. Pr.		63,000.00
	300 Ont. & West.		8,100.00
	100 Atch. Pr.		9,500.00
	500 Con. Gas		65,000.00
	500 Del. & Hudson		76,500.00
	324 So. Pac. Ctf. of Int.		30,780.00
[fol. 173]			$155,695.83
Jany. 1, 1915.	To balance	$610,409.86	
	10 M Cent. of Ga. Inc. 5%		10,000.00
	Long 25 M N. Y. City Reg. 4% (1958)		23,916.67
	200 M N. Y. City Reg. 4% (1959)		193,333.33
	300 Atl. Coast Line 4% Ctf. of Ind.		300.00
	7 Atch. 4% (1955)		6,463.33
	3 M Atch. 5% (1917)		3,012.50
	18 M Balt. & Ohio Conv. 4½% (1933)		15,590.00
	200 So. Rwy. Pr. Div. Scp.		16,000.00
	1,000 Atch.		93,000.00
	100 Atch. Pf.		9,600.00
	100 Atl. Coast Line		9,900.00
	1,225 Balt. & Ohio		83,300.00

Date of delivery		Amount	
Dr.			Cr.
	120 Balt. & Ohio Pr.		8,280.00
	500 Con. Gas		57,000.00
	500 Del. & Hud.		70,000.00
	500 Gt. Nor. Pr.		5,600.00
	300 Lou. & N.		33,600.00
	3 Lou. Prop.		300.00
	100 Nl. Bank of Commerce .		16,700.00
	115 Nl. Park Bank		45,080.00
	500 N. Y. Cent.		42,000.00
	500 Norf. & W.		49,000.00
	1,300 Nor. Pacific		130,000.00
	300 Ont. & W.		6,300.00
	1,100 Penn.		57,200.00
	2,000 Reading		144,000.00
	200 Rock Isl. Co. N. J.		200.00
	1,300 So. Pacific		106,600.00
	105 So. W. Ry. of Ga.		10,500.00
	100 So. Rwy. Pr.		5,800.00
	1,000 Un. Pac.		115,000.00
	200 Un. Pac. Pr.		15,800.00
	100 Va. Chem. Pr.		8,000.00
	Rts. 500 Con. Gas		1,325.00
			$1,443,500.83
Jany. 1, 1916.	To Balance	$227,476.30	
	10 M Cent. Ga. Inc. 5% .		10,000.00
	Long 25 M N. Y. City Reg. 4% (1958)		24,666.67
	200 M N. Y. City. Reg. 4% (1959)		197,333.33
	3 M Atch. 5% (1917) ..		3,042.50
	18 M Balt. & Ohio Conv. 4½% (1933)		17,550.00
	200 So. Rwy. Pr. Div. Scp. .		166.00
	12,500 Con. Gas conv. del. 6% (1920)		15,875.00
	17 M Del. & H. 20 Yr. conv. 5%		18,062.50
	20 M N. Y. Cent. conv. 6% (1935)		22,600.00
	1,225 Balt. & Ohio		116,375.00
	120 " " Pr.		9,240.00
	500 Con. Gas		21,500.00
	500 Del. & Hudson		76,500.00
	500 Gt. Nor. Pr.		63,000.00
	300 Lou. & Nash.		38,700.00

Date of delivery		Amount
Dr.		Cr.
	100 Nl. Bank of Commerce .	18,000.00
	3 Lou. Prop.	300.00
	115 Nl. Park Bank	47,725.00
	500 N. Y. Cent.	54,500.00
	500 Norf. & W.	60,500.00
	1,300 Nor. Pacific	152,100.00
	300 Ont. & W.	9,300.00
	2,000 Reading	164,000.00
	200 R. Isl. Co. N. J.	100.00
	1,300 So. Pacific	133,900.00
	105 So. W. Ry. of Ga.	10,500.00
	100 So. Rwy. Pr.	6,300.00
	1,000 Un. Pac.	139,000.00
	200 " " Pr.	16,400.00
	100 Va. Chem. Pr.	11,200.00
		$1,508,436.00

[fol. 174]

January 1, 1917. By balance $8,367.17

10 M Cent. of Ga. Inc. 5%	$10,000.00
Long 25 M N. Y. City Reg. 4% (1958)	25,416.67
200 M N. Y. City Reg. 4% (1959)	203,333.36
18 M Balt. & Ohio conv. 4½% (1933)	17,370.00
200 So. Rwy. Pr. Div. Sep. .	166.00
12,500 Con. Gas. Conv. del. 6% (1920)	15,500.00
17 M Del. & H. 20 Yr. Conv. 5%	17,892.50
20 M N. Y. Cent. Conv. 6% (1935)	22,600.00
1,225 Balt. & Ohio	101,900.00
120 " " Pr.	8,880.00
1,000 Con. Gas	132,000.00
500 Del. & Hudson	74,500.00
500 Gt. Nor. Pr.	58,500.00
100 Nl. Bk. of Commerce ..	18,900.00
115 Nl. Park Bank	80,250.00
500 N. Y. Cent.	51,000.00
500 Norf. & W.	67,500.00
1,300 No. Pacific	143,000.00
300 Ont. & W.	8,700.00
1,300 So. Pacific	126,100.00
3 Lou. Prop.	300.00
105 So. W. Ry. of Ga.	10,500.00

Date of delivery	Amount
Dr.	Cr.
100 So. Rwy. Pr.	6,800.00
1,000 Un. Pac.	147,000.00
200 " " Pr.	16,600.00
100 Va. Chem. Pr.	10,700.00
	$1,375,408.50

[fol. 175] EXHIBIT "B-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

1917

Stock in Foreign Corporations

561 shares Graniteville Mfg. Co.....	$44,800.00
35 shares Warren Mfg. Co.....	3,150.00
9 41/100 shares Langley Mills, Prfd.....	470.50
23 shares Langley Mills, Common.....	705.00
	$49,125.50

Choses in Action

Notes and Loans for 1917:

Sylvester & Son.....	40,000.00
Graniteville Mfg. Co.....	69,000.00
von Kamp & Gerald.....	5,000.00
Alexander, Goodwin & Garrett.....	20,000.00
J. H. Markwalter.....	7,000.00
Central Trust Company.....	5,026.69
	$140,626.69

Stocks not Taxed and Deducted

For 1911:

[115 shares National Park Bank]*.....	$[41,400.00]*
[100 shares National Bank of Commerce]*.....	[20,600.00]*
105 shares Southwestern Rwy. of Ga.....	10,500.00

For 1912:

115 shares National Park Bank.....	[41,975.00]*
100 shares National Bank of Commerce.....	[19,700.00]*
105 shares Southwestern Rwy. of Ga.....	10,500.00

[*Words and figures enclosed in brackets erased in copy.]

For 1913:

115 shares National Park Bank	[41,860.00]*
100 shares National Bank of Commerce	[19,700.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

For 1914:

115 shares National Park Bank	[45,020.00]*
100 shares National Bank of Commerce	[17,000.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

[fol. 176] For 1915:

115 shares National Park Bank	[45,080.00]*
100 shares National Bank of Commerce	[16,700.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

For 1916:

115 shares National Park Bank	[47,725.00]*
100 shares National Bank of Commerce	[18,000.00]*
105 shares Southwestern Rwy. of Ga.	10,500.00

For 1917:

115 shares National Park Bank	80,250.00
100 shares National Bank of Commerce	18,700.00
105 shares Southwestern Rwy. of Ga.	10,500.00

Loans to be Added for 1911, 1912, 1913, 1914, 1915, 1916

J. H. Markwalter	$7,000.00
von Kamp & Gerald	5,000.00
	$12,000.00

EXHIBIT "B-2" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of the Testimony of J. B. Clews, a Member of the Firm of Henry Clews & Co.

J. B. White, late of Richmond County, Georgia, maintained an account with us. We had property on hand belonging to Mr. White January 1, 1911, as set out in a list hereto attached. He owed us, against these securities, $480,635.85 January 31, 1911.

Upon this list wherever the word "m" appears, it means "thousand," such as "200m" means "200,000."

Mr. White owed us money from time to time, and finally, on January 1, 1917, all of his indebtedness to us was paid. He had to

[*Words and figures enclosed in brackets erased in copy.]

his credit $8,367.70, and all of the property mentioned on this list, as of date of January 1, 1917. This result was "to a large extent brought about by cash remittances from Augusta Georgia, through the National Exchange Bank of Augusta, and the Planters Loan & Savings Bank."

The par value of all of the stocks mentioned on this list is $100 a share, except Reading, which is $50 a share. List referred to is that attached to assessment by Steed, Tax Receiver, supra, Ex. "B-1" and not repeated here.

[fol. 177] EXHIBIT "C-1" TO ORIGINAL PETITION OF STATE OF GEORGIA

Memorandum of the Reports of the Comptroller General

Year	County	Table 11, money & solvent debts	Table 12, stocks & bonds
1911	Bibb	1,242,150.00	84,800.00
1912	"	1,060,550.00	106,275.00
1911	Chatham	2,011,254.00	865,749.00
1912	"	2,035,093.00	801,325.00
1911	Fulton	7,531,255.00	286,680.00
1912	"	9,322,610.00	457,290.00
1911	Richmond	1,899,678.00	139,880.00
1912	"	1,879,800.00	120,315.00
1913	Bibb	1,143,740.00	105,765.00
1914	"	2,935,605.00	110,915.00
1913	Chatham	2,051,010.00	657,465.00
1914	"	2,126,272.00	697,321.00
1913	Fulton	10,358,175.00	1,097,825.00
1914	"	11,999,630.00	352,000.00
1913	Richmond	1,972,475.00	124,500.00
1914	"	1,922,744.00	190,000.00
1915	Bibb	2,764,195.00	74,375.00
1916	"	1,707,225.00	12,050.00
1915	Chatham	2,030,531.00	381,271.00
1916	"	2,319,948.00	423,560.00
1915	Fulton	10,761,110.00	1,104,140.00
1916	"	10,122,115.00	387,770.00
1915	Richmond	2,064,708.00	180,132.00
1916	"	2,037,507.00	187,970.00
1917	Bibb	1,692,310.00	22,250.00
1918	"	1,691,630.00	18,100.00
1917	Chatham	2,623,993.00	324,200.00
1918	"	2,185,820.00	322,605.00
1917	Fulton	11,035,665.00	281,660.00
1918	"	12,103,160.00	465,610.00
1917	Richmond	2,451,672.00	154,320.00
1918	"	2,885,027.00	482,480.00

[fol. 178] EXHIBIT "C-2" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of Affidavit of J. B. Clews

All the stocks listed in Deponent's Depositions as belonging to J. B. White for the years 1911 to 1917, inclusive, while purchased for the account of White, were taken in the name of Henry Clews & Co., and continuously so held, and this condition existed until either the stocks were sold, or, after the death of White, were held for the account of Callaway, Executor, until delivered by said Executor to Henry Clews & Co., as agents for the trustees under the Will of J. B. White in the winter of 1918. They were never in the physical possession of J. B. White, but were bought from time to time by Henry Clews & Co. for the account of White, paid for by Henry Clews & Co., carried, in accordance with the usual custom of Stock and Bond Brokers, on margin for the account of White, being in Henry Clews & Co. as security for the balance due on the purchase price. The amount stated at the head of the list of securities for each of said years was the amount due Henry Clews & Co. by White, thus:

On February 1st, 1911	$478,877.33
On January 31st, 1912	707,294.00
On January 1st, 1913	520,626.89
On January 1st, 1914	712,840.89
On January 1st, 1915	610,409.86
On January 1st, 1916	227,476.30

So long as there was any balance due Henry Clews & Co. by said White, the interest of White was the difference between the market value of the securities at the time and the amounts White owed Clews.

[fol. 179] EXHIBIT "C-3" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of Affidavit of John W. Dickey, Stock and Bond Broker in Augusta Since 1886

Have sold securities of local corporations, not including over $1,200,000 in municipal bonds or securities, and probably seventy-five per cent or $800,000 are owned in Augusta. The Georgia Railroad and Banking Company has $2,500,000 bonds outstanding; nearly one-half are owned in Augusta; some $2,000,000 to $3,000,000 stocks of foreign corporations owned in Augusta.

Deponent has sold stocks and bonds in Savannah, Macon, and Atlanta, but, while not familiar with the ownership of stocks and bonds in those cities, he knows that the people of those cities like

those of Augusta, own large quantities of securities; that the people of Atlanta own probably five times as much as those in Augusta.

The Comptroller-General's report in 1918, returns of stocks and bonds in Richmond County of $482,480. Deponent is sure that these figures do not represent more than ten per cent of the amount of stocks of non-resident corporations, and if $400,000 represents assessments on the estates of White and Jack, then the remaining $82,480 does not represent more than two per cent of the securities owned in Richmond County.

Deponent examined table 12 of Comptroller-General's report, 1916 and 1918, under heading stocks and bonds, and from figures shown those owned in other counties, will not exceed five per cent. Where of stocks and bonds returned in those counties, as compared with those owned in other countries, will not exceed five per cent. Where stocks and bonds are purchased on margin, the buyer has only an interest to the extent of his payment until all is paid.

EXHIBIT "C-4" TO ORIGINAL PETITION OF STATE OF GEORGIA

Amount of bonds outstanding of the Georgia Railroad and Banking Company, $2,400,000.

[fol. 180] EXHIBIT "C-5" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of Affidavit of Rufus H. Brown, Secretary of Augusta Clearing House Since 1914

Shows deposits in Banks in Augusta as follows:

On Jan. 1st, 1915 said deposits in said Banks as reported were	$8,296,607
On Jan. 1st, 1916 said deposits so reported were	10,135,480
On Jan. 1st, 1917 said deposits so reported were	12,827,533
On Jan. 1st, 1918 said deposits so reported were	17,632,542
On Jan. 1st, 1919 said deposits so reported were	20,145,949

EXHIBIT "C-6" TO ORIGINAL PETITION OF STATE OF GEORGIA

Affidavit of E. H. Callaway

Deponent examined the records of deeds and mortgages of Richmond County for 1909 and 1910, and found uncancelled $1,083,342. Uncancelled February 1, 1912, $926,571; uncancelled February 1, 1913, $748,233; uncancelled January 1, 1914, $629,582; uncancelled January 1, 1915, $564,801.

NOTE.—Deponent does not state whether these conveyances were made by Banks or not, but states that he took memoranda of bonds for title, cancellations, etc.

[fol. 181] EXHIBIT "C-6" TO ORIGINAL PETITION OF STATE OF GEORGIA

Joint Affidavit of James S. Bussey, Jr., and Henry G. Howard

Deponents examined the records of deeds and mortgages from February 1911 to January 1915, and found security deeds, bonds for title, etc., showing debts charged against property not cancelled as follows:

Aggregate amount not cancelled Jan. 1, 1912.....	$506,612
" " " " " " 1913.....	1,373,853
" " " " " " 1914.....	1,961,015
" " " " " " 1915.....	1,872,698
" " " " " " 1916.....	682,712
" " " " " " 1917.....	434,264

EXHIBIT "C-7" TO ORIGINAL PETITION OF STATE OF GEORGIA

Inventory of the Estate of Benson in 1916.

Aggregated $123,487.38, of which $92,587.38 was cash.

EXHIBIT "C-7" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of Affidavit of E. H. Callaway

Deponent examined inventories in the office of the Ordinary, of estates exceeding $10,000. Sixty-six estates had stock in non-resident corporations, aggregating $1,579,122. Eighteen estates had cash in Bank of $180,489.

[fol. 182] EXHIBIT "C-8" TO ORIGINAL PETITION OF STATE OF GEORGIA

Brief of Testimony of C. A. Steed

I was Tax Receiver of Richmond County in 1918 and remember the assessment placed upon the securities of J. B. White for that year. It was $250,000.00. I remember the Jack estate. It was assessed for $150,000.00. If the entire return of stocks and bonds of Rich-

mond County for last year was $482,000.00, that would leave to the balance of the County $132,000.00. I did not follow literally the figures of the affidavit in the assessment. In a hurry I put some figures down there. I think probably $150,000.00 too much, as they don't tally. My assessment amounts to about $150,000.00 more than Clews & Company's statement shows. The affidavit of Mr. Dougal and Mr. McPherson were brought down here.

We had a rule not to assess for the full market value. In starting out where there is no arbitration I would probably make the assessment at the full market value, but whenever it gets down to an arbitration, I never make it at the true market value, but I would most always take the first assessment and put it down, and if the parties forced me to an arbitration, settle on some basis later on lower than the full market value.

The Board of Assessors never go over two-thirds valuation on mortgages, stocks and bonds. I have not been doing that. That has been done by the Board of Assessors. They have been in existence about six years.

When I make assessments it is generally in accordance with the property value. I have never undertaken to assess any property at its full market value. I know of other la-ge estates that have been administered here, which I have not undertaken to assess. It has not been brought to my attention. I begin to see that I will have to go after them. So far I have not gotten after them. I have not been ordered by the Comptroller General to go after them. I did have [fol. 183] one estate that I had adjustment in, the Benson estate. Had instructions from the County Commissioners, but was not arbitrated. We settled it with Mr. Hamilton Phinizy and Pierce Brothers, who represented the Benson Estate. We started out with the full market value, and I think we settled on about 33⅓ per cent. on the Dollar.

Cross-examination:

I never reported any of these instances that Judge Callaway asked me about to the Comptroller General. To be candid with you, I have never examined those records. I knew of these estates in a general way. The State's taxing authorities, outside of its being represented by me, don't know anything about them, up until this year. I didn't think I had anything to do with it until this case came up, and the law was changed last August.

Redirect examination:

Mr. White paid taxes here during these years. He was the largest taxpayer on real estate, approximately $600,000.00.

Cross-examination:

I never did have a taxpayer come in to make his returns and state in answer to question number 17 that he had $1,000,000.00, and I tell him "I will assess you at $200,000.00. If you make a

return of $100,000.00, I put you down at $100,000.00. If you come to me as taxpayer and make your return and say "I have $1,000,000.00," I put you down at $1,000,000.00.

[fol. 184] EXHIBIT "D" TO ORIGINAL PETITION OF STATE OF GEORGIA

August 22, 1919.

Hon. James T. Gardner, Chairman Board of Commissioners of Roads and Revenues of Richmond County, Augusta, Ga.

DEAR SIR:

In re Arbitration of Taxes Estate J. B. White

Messrs. Thos. S. Gray and Percy E. May, the arbitrators appointed by us to arbitrate the back taxes upon the estate of J. B. White, having notified us, that they had failed to agree upon the value of the property, and had failed to name an umpire, and stating that they see no prospect of their agreeing upon either of those matters, we hereby request that you call a meeting of the Board of Commissioners of Roads and Revenues of Richmond County, as soon as practicable, in order that said Board may name an umpire to act with said arbitrators in said matter.

This request is made in pursuance of the Act of 1910 as set forth in Parks' Code, Sec. 1116-D.

Please notify us of the time at which the meeting of the Commissioners will be held for this purpose, and oblige,

Yours very truly, E. H. Callaway, Executor of J. B. White.
C. A. Steed, Receiver of Tax Returns, R. C.

[fol. 185] Affidavit of B. F. Pierce to original petition omitted in printing.

IN SUPERIOR COURT OF RICHMOND COUNTY

ORDER TO SHOW CAUSE

The foregoing Petition read and considered.

Ordered that the same be filed and served as required by law.

Ordered further, That the Defendants, C. A. Steed, as Tax Receiver, and C. S. Bohler, Tax Collector, show cause before me at the Court House in Richmond County, on the 13th day of September, as to why they should not be enjoined as therein prayed until the final hearing, and in the meantime, until the hearing as fixed above, let said cause remain in statu quo.

This September 6, 1919.

Henry C. Hammond, J. S. C. A. C.

The foregoing petition presented to me at 9:45 A. M. 6th Sep. 1919 and by me taken under advisement.

Henry C. Hammond, J. S. C. A. C.

[fol. 186] STATE OF GEORGIA,
Richmond County:

THE STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Ex. of the Estate of J. B. White, et al.

PROCESS

To the sheriff of said county or his lawful deputy, Greeting:

The defendant, E. H. Callaway, in his representative capacity as Executor of the Will of J. B. White, Percy E. May, Chas. D. Carr, and Thomas S. Gray, Arbitrators, C. A. Steed, as Tax Receiver, and C. S. Bohler, as Tax Collector, are hereby required, in person or by attorney, to be and appear at the Superior Court next to be holden in and for the County aforesaid on the Third Monday in November 1919, then and there anwer the Plaintiff in action in Equity, etc. as in default of such appearance, said Court will proceed thereon, as to justice may appertain.

Witness, the Honorable Henry C. Hammond, Judge of said Court, this 6th day of September, 1919.

Geo. B. Pournelle, Deputy Clerk.

[fol. 187] Exhibit J to Amendment to Complaint No. 2—Continued

Copy of all Amendments filed by Plaintiff in the following case:

THE STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Executor of J. B. White; PERCY E. MAY, CHAS. D. Carr and Thomas S. Gray, Arbitrators; C. A. Steed, Tax Receiver, and Chas. S. Bohler, Tax Collector of Richmond County.

Equitable Petition Filed to the November Term, 1919, of Richmond Superior Court

[fol. 188] STATE OF GEORGIA,
Richmond County:

THE STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Executor of the Estate of J. B. White, et al.

AMENDMENT TO PETITION

Now comes the Plaintiff in the above stated cause, and amends its Petition as follows:

1. That said Arbitrators returned their award as follows: "State of Georgia, Richmond County, Sept. 2nd, 1919.

"The Arbitrators and the Umpire selected as aforesaid having this day had under consideration the valuation of the personal property of the Estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, for taxation upon consideration thereof have fixed said valuation at $1.

"For year	1911	$112,744.83
" "	1912	154,550.67
" "	1913	187,927.98
" "	1914	194,138.96
" "	1915	190,202.74
" "	1916	301,183.67
" "	1917	360,813.92

"In witness of which they have hereto set their hands and affixed their seals, this the day and year above written.

Thos. S. Gray, Arbitrator. P. E. May, Arbitrator. Chas. D. Carr, Umpire."

2. That the submission, under which the foregoing award was rendered, is uncertain and did not submit anything to the Arbitrators.

3. That the said award, as made, does not follow the submission, if anything was submitted; thus, the submission recites that a "controversy has arisen" between the State and Executor of White [fol. 189] "touching the valuation for taxation of mortgages and foreign stocks and bonds, etc., for the year 1911 to 1917, inclusive," and as said "named persons were unable to agree as to the valuation of said personal property," they selected Arbitrators, respectively. The Arbitrators took an oath that they would "faithfully and impartially make a true and just assessment of the tax returns and property in question, and would determine the matter submitted to them, according to law and the justice and equity of the case." From this Petitioner charges it does not appear what was submitted to the Arbitrators. The submission is vague and uncertain. If it submits anything, it submits the "controversy" "touching the valuation for taxation of mortgages and foreign stocks and bonds, etc., for the years 1911 to 1917, inclusive." The Arbitrators, however, did not determine this controversy. The award says nothing as to the value of said mortgages, stocks and bonds, but recites that the arbitrators had under consideration "the valuation of the personal property of the Estate of J. B. White for the years" 1911 to 1917, inclusive, for taxation, and that they "fixed said valuation" as stated in the award, when, under the law, they should have found the "true value" of said stocks and bonds. They had no authority to "fix" any value they saw fit for the purpose of taxation. The Arbitrators not only did not so find, but went beyond the terms of the submission and "fixed" the "valuation" of the personal property of the Estate of White for taxation. All of said personal property of White was not in controversy; only, as stated, the "valuation for taxation of mortgages, foreign stocks and bonds," and this value was not found. Plaintiff therefore contends that the submission was not followed, and the award was not restricted to what was in controversy.

4. That the submission in said cause was illegal, in that it submitted to Arbitration questions not authorized by law, to-wit: It submitted "the valuation for taxation" and required the Board of Arbitrators to "faithfully and impartially make a true and just assessment of the tax returns and property in question," when the [fol. 190] only thing which could have been submitted to said Board of Arbitrators was the "true value" of the property assessed by the Tax Receiver on information.

5. Petitioner further shows that none of the evidence as introduced by the defendant was legal or proper evidence, and the same was objected to by plaintiff before said Board of Arbitration as illegal and not tending to show the "true value" of the property sought to be taxed, and which had been assessed by the Tax Receiver, and in nowise contradicted the evidence of plaintiff as to "true value" as shown by the evidence introduced by plaintiff. The finding of said Board of Arbitrators was wholly contrary to the legal evidence before them, was the result of a mistake or misapprehension on their part of their power and duties.

6. That said award is illegal and contrary to law and directly in the face of a mandatory statute which required said arbitrators to find what was the "true value" of the property which had been assessed by the Tax Receiver, and was reached by an arbitrary refusal upon the part of said Arbitrators to consider the only evidence of "true value" that was introduced upon the hearing before said Arbitration Board, which said testimony was that introduced by the Plaintiff in behalf of itself and the other taxing authorities of Richmond County, and which was the only testimony touching what was the "true value" or "fair market value" of the property which had been assessed by said Tax Receiver, as there was no oral testimony, nor was there any documentary evidence introduced by E. H. Callaway, as Executor of J. B. White, which in any way contradicted or tended to disprove the value of the property as shown by the evidence of Petitioner, and for this reason the value placed upon the property by the Tax Receiver should have been found by said Board of Arbitration to be the "true value" of said property, which refusal and failure to find as aforesaid, was arbitrary, and Petitioner charges was due to bias and prejudice on behalf of said Board of Arbitrators in favor of said E. H. Callaway, as Executor of the Estate of J. B. [fol. 191] White, and especially so on the part of said C. D. Carr, Umpire in said Arbitration, who had, previous to entering upon the discharge of his duties as said Umpire, expressed an opinion adverse to the taxing of said property by the taxing authorities, he having stated that in his opinion the Estate of said J. B. White should not be taxed for any back years upon the property in question, as the State and county were seeking to do, for the reason that the said J. B. White had, in his will, made a substantial bequest to the City Council of Augusta.

7. That said Carr so expressed himself in the presence of one F. B. Harmon, who in turn, in conversation with one M. C. B. Holley, a member of the Board of County Commissioners of Roads and Revenues, informed the said Holley of such expression of bias on the part of said C. D. Carr, to which fact the said M. C. B. Holley has made affidavit, which affidavit is hereto attached, marked Exhibit "A," and made a part of this Amendment.

8. That your Petitioner did not have knowledge of this fact prior to the sitting of said Board of Arbitrators, on the 2nd day of September, 1919.

Wherefore, Petitioner prays that this Amendment be allowed and made a part of this record, and that said award be set aside, and that it have such further relief in the premises to which it may be entitled.

(Signed) Pierce Bros., A. L. Franklin, W. K. Miller, Attorneys for Petitioner.

[fol. 192] Affidavit of Benj. E. Pierce to above paper omitted in printing.

[fol. 193] EXHIBIT "A" TO ABOVE AMENDMENT

STATE OF GEORGIA,
Richmond County:

Personally appeared before the undersigned, M. C. B. Holley who on oath deposes and says that he is one of the Commissioners of Roads and Revenues of Richmond County, Georgia, and therefore in a general way is familiar with the effort of the County and other taxing authorities to enforce the collection of back taxes, for the years 1911 to 1917, inclusive, upon property owned by the late J. B. White, to enforce which there is now pending certain litigation; that he was also familiar with the fact that an arbitration of certain property assessed by the Tax Receiver of Richmond County had been demanded by the Executor of this Estate and that an arbitration Board had been appointed, composed of C. D. Carr, Umpire, and P. E. May and T. S. Gray, Arbitrators; that said Board of Arbitration met on the afternoon of September 2nd, 1919; that subsequent to the appointment of C. D. Carr, as Umpire, Deponent was engaged in conversation with one F. B. Harmon, and in the course of conversation, the question of taxation of the property belonging to the said Estate of J. B. White, for past years, came up, and in discussing the arbitration proceeding and the personnel of said Board, the said Harmon stated, in substance, that he believed that C. D. Carr was a man of integrity and would do what he thought was right, but that he had heard him state in conversation that he did not believe that the County and other taxing authorities should seek to compel the said J. B. White's Estate to pay taxes for previous years, as they were then seeking to do, for the reason that the said J. B. White had left a substantial bequest to the City Council of Augusta.

(Signed) M. C. B. Holley.

Sworn to and Subscribed before me this 15th day of November, 1919. Furlow Hollingsworth, Notary Public, Richmond County, Georgia.

[fol. 194] The within Amendment is hereby allowed and ordered filed as part of the record in said cause.

This 17th day of February, 1920.

(Signed) Henry C. Hammond, J. S. C. A. C.

[fol. 195] STATE OF GEORGIA,
Richmond County:

IN THE SUPERIOR COURT OF SAID COUNTY, NOVEMBER TERM, 1919

STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Executor of J. B. White

INTERVENTION OF RICHMOND COUNTY—Filed Sept. 6, 1919

Now comes Richmond County and files this its Intervention in the above stated cause, and hereby adopts each and every allegation in said Petition in as full a manner as if the same were set out herein, and prays that it be made a Party Plaintiff in said cause.

Pierce Brothers, A. L. Franklin, Wm. K. Miller, Attorneys for Richmond County.

The foregoing Petition read and considered.

It is hereby ordered that the said Richmond County be, and it is hereby, made a Party Plaintiff in said cause.

This 17th day of February, 1920.

Henry C. Hammond, J. S. C. A. C.

[File endorsement omitted.]

[fol. 196] STATE OF GEORGIA,
Richmond County:

IN THE SUPERIOR COURT OF RICHMOND COUNTY, NOVEMBER TERM, 1919

STATE and RICHMOND COUNTY

vs.

E. H. CALLAWAY et al.

AMENDMENT TO PETITION

Now come the Plaintiffs in the above stated cause and amend their petition of file as follows:

1. Defendant, E. H. Callaway, as executor of J. B. White, deceased, having demurred to said petition upon the ground that there is set out in the original petition only a brief of the evidence submitted to the Board of Arbitrators on the hearing before them and in addition to the filing of his demurrer, he has also filed an answer to said petition in which he sets forth in detail the evidence

which was produced before such Board of Arbitrators, in addition to that attached to Plaintiff's original petition, the first of which is the testimony of J. B. Clews introduced by Plaintiff, only a brief of which attached to Plaintiff's original petition as a part of (B-1); therefore Plaintiffs have had copied in full, a brief of this testimony as made by the Defendant, E. H. Callaway as executor, and which is attached to his answer as exhibit (A), and herewith attaches the same to this amendment as exhibit (A), and makes the same a part hereof.

2. That in the original petition Plaintiffs also only attached a brief of the affidavit of J. B. Clews introduced by Defendant on said hearing which exhibit is marked exhibit (C-2) to the original petition; therefore Plaintiffs have also had copied in full, this affidavit of J. B. Clews and attaches the same hereto as exhibit (B), and makes the same a part hereof.

3. That only a brief of the affidavit of John W. Dickey, introduced by the Defendant before said board of arbitration is annexed to Plaintiff's original petition as exhibit (C-3), and this affidavit Plaintiffs have also had copied in full and attaches the same hereto as exhibit (C), and makes the same a part hereof.

[fol. 197] 4. Defendant amends (C-4) of its original petition by stating that said printed form referred to therein showed outstanding bonds of said company to be $2,500,000.00 as claimed by said Defendant in his answer.

5. That there is also only a brief of the affidavit of Rufus Brown, annexed to Plaintiff's original petition as exhibit (C-5); Plaintiff therefore attaches hereto an exact copy thereof, as exhibit (C-1), and makes the same a part hereof.

6. That only a brief of the affidavit of E. H. Callaway, which was introduced before said board by said Defendant, is set forth as exhibit (C-6) to Plaintiff's original petition; therefore Plaintiffs have had copied in full this affidavit of said E. H. Callaway and attaches the same to this amendment as exhibit (D) and makes the same a part hereof.

7. That there is only a brief of the affidavits of James S. Bussey, Jr., and Henry G. Howard, set out in exhibit (B-6) to Plaintiff's original petition, which affidavits Plaintiffs have also had copied in full and herewith attaches the same to this amendment as exhibit (E) and makes the same a part hereof.

8. That exhibit (C-7) of Plaintiff's original petition only contains a brief of the inventory of the estate of William E. Benson, as introduced by said Defendant before said board of arbitration. Plaintiffs have also had this copied in full and attaches the same to this amendment as exhibit (F), and makes the same a part hereof.

9. That there is only a brief of the affidavit of E. H. Callaway which was introduced before said board upon the hearing, set out

in exhibit (C-7) of Plaintiff's original petition, wherefore Plaintiffs have also had this affidavit copied in full and attaches the same to this amendment as exhibit (G), and makes the same a part hereof.

[fol. 198] 10. That only a brief of the testimony of C. A. Steed is set out in exhibit (C-8) to Plaintiff's original petition, and said defendant having insisted that the same should be set out in question and answer form, plaintiffs have had the same copied in such question and answer form as transcribed by the stenographer, and hereto attached the same to this amendment as Exhibit (H), and make the same a part hereof.

11. Plaintiff's also attach hereto as Exhibit (I) the extract from the report of the State Tax Commission exactly as it is set out in Defendants' answer as Exhibit (H) thereof, and make the same a part hereof.

12. Said defendant, E. H. Callaway, Executor as aforesaid also insists in his answer that the contracts between Counsel and the State and Richmond County were introduced upon the hearing before said arbitration board by him and that the same should be set out in said petition, and while plaintiffs allege that such contract could in no manner elucidate the question of the value of the property which had been assessed by the Tax Receiver, plaintiffs nevertheless hereto attach copies thereof as Exhibit (J) and make the same a part hereof.

13. Plaintiffs allege that the foregoing Exhibits, together with the Exhibits attached to the original petition comprise all of the evidence and information which was submitted to said Board of Arbitration, upon which it rendered the award complained of, and petitioners charge that said Arbitrators arbitrarily disregarded the only evidence submitted to them as to value and rendered an award in an amount so insignificant that it shows upon the face thereof that the same was the result of prejudice, bias and fraud, or a mistake on the part of said Arbitrators, and particularly is this true, as no evidence of the value of the property to be taxed was submitted by defendant, Tax Payer, to the Board of Arbitration, and no issue as to the value of said property to be taxed was raised or submitted by him, nor did any issue as to the value of said property arise from the evidence itself, and there was no issue as to the value before the Arbitrators for them to decide.

[fol. 199] Plaintiffs also amend paragraph eight of their petition by adding thereafter, the following subsections:

A. That said Arbitrators arbitrarily fixed the value of the stocks and bonds owned by said J. B. White for the year 1911 at only $112,744.83, when as a matter of fact the undisputed evidence submitted to them showed that the value of said securities owned by the said J. B. White during said year, after deducting the sum of $72,500.00 worth of National Bank Stocks and South Western Railroad Company Stocks of Georgia, which was not taxable, showed the fair market value of said property to be $939,866.67, which amount

Plaintiffs allege should have been found by the Arbitrators to be the "fair market value" thereof. It will therefore be seen that if said award is allowed to stand, the State, Richmond County, and the Board of Education of Richmond County will lose the difference in taxes upon property, the fair market value of which was established by the undisputed evidence to be $826,921.84 more than that as arbitrarily fixed by said award, for seven years with interest, for this one year alone.

B. Likewise for the year 1912, said board arbitrarily fixed the value of the stocks and bonds owned by the said White for the year 1912 at only $154,550.67, when as a matter of fact the undisputed evidence submitted to said Board showed that the "fair market value" of the taxable stocks and bonds owned by the said J. B. White for said year, after deducting the sum of $72,500 worth of National Bank Stock and South Western Railroad Company Stock of Georgia, which was not taxable, was the sum of $1,337,171.54 which amount petitioners allege said Board should have found as being the "fair market value" of said property and if said award is allowed to stand, the State, Richmond County, and the Board of Education of Richmond County, will lose taxes upon property, the fair market value of which, the undisputed and uncontradicted testimony showed was worth the sum of $1,182,621.00 more than the amount as arbitrarily fixed by said Board as being the value thereof, for six years with interest therein.

[fol. 200] C. That said Arbitrators also likewise, for the year 1913 arbitrarily fixed the value of the stocks and bonds of said J. B. White at the sum of $187,927.98, when as a matter of fact the undisputed and uncontradicted evidence submitted to them showed, after deducting said $72,500.00 worth of National Bank Stock and stock in the South Western Railroad Company of Georgia, which was not taxable, that the fair market value of said property was the sum of $1,259,905.83 and said Board should have returned this as being the "fair market value" thereof, and if said award is allowed to stand, the State, Richmond County, and the Board of Education of Richmond County will lose taxes upon property, the undisputed value of which the evidence showed to be $1,071,978.55 more than the amount found by said Arbitrators besides the interest thereon for a period of five years.

D. That said Board also likewise, arbitrarily fixed the value of stocks and bonds of said J. B. White for the year 1914 at the sum of $194,138.96, when as a matter of fact the undisputed evidence submitted to them, after deducting $72,500.00 worth of National Bank Stock and South Western Railroad Company Stock which was not taxable, the actual fair market value of said property was $1,484,415.83 and which amount Plaintiffs allege should have been found to be the "fair market value" of said property by said arbitrators from the undisputed testimony, and if said award is allowed to stand, the State, Richmond County, and the Board of Education of Richmond County will lose taxes upon property, the undis-

puted fair market value of which is $1,290,276.87 more than the amount as arbitrarily fixed by said Board, for four years besides the interest thereon.

E. That said Board for the year 1915 likewise, arbitrarily fixed the value of said stocks and bonds owned by the said J. B. White during said year at only $190,202.74, when as a matter of fact the undisputed evidence submitted to them showed that said property for said year, after deducting $72,500.00 worth of National Bank [fol. 201] Stock and South Western Railroad Company Stock which was not taxable, was worth the "fair market value" of $1,265,298.09 and that if said award is allowed to stand, the taxing authorities will lose taxes upon property, the undisputed fair market value of which, was shown to be the sum of $1,075,094.35 more than the amount as arbitrarily fixed by said Board for three years besides the interest thereon.

F. That said Board likewise disregarded the evidence submitted and for the year 1916 arbitrarily fixed the value of the stocks and bonds owned by said White for such year at only $301,183.67, when as a matter of fact the undisputed evidence submitted to them showed that the "fair market value" thereof, for such year, after deducting the sum of $72,500.00 worth of National Bank Stock and Stock in the South Western Railroad Company of Georgia was of the fair market value of $1,423,936.00 and if said award is allowed to stand, said taxing authorities will likewise lose taxes upon property, the undisputed fair market value of which is $1,122,752.43 more than the amount as arbitrarily fixed by said Board as the value thereof, for the years 1916 and 1917 besides the interest thereon.

G. That said Board arbitrarily fixed the value of the stocks and bonds owned by the said White for the year 1917 at only $360,813.92, when as a matter of fact the undisputed evidence submitted to them showed, after deducting said $72,500.00 worth of National Bank Stock and South Western Railroad Company Stock which was not taxable and was of the fair market value of $1,492,659.19, and if said award is allowed to stand, the State, Richmond County, and the Board of Education of Richmond County will lose taxes upon property, the undisputed fair market value of which was shown to be $1,132,845.27 more than the amount as arbitrarily fixed as the value thereof by said Board of Arbitration.

H. All the foregoing allegations Plaintiffs charge are conclusively shown by the undisputed evidence attached to the petition to be the [fol. 202] fair market value of the property to be taxed and petitioners charge that said Arbitrators disregarded the said undisputed evidence of said value in rendering the said award, and as alleged in the original petition, paragraph — the only way said Arbitrators could have possibly arrived at said award was by deducting the indebtedness of said White to said Clews for said several years, and arbitrarily writing off certain other amounts, unwarranted by the testimony, arbitrarly divided the equity of redemption and returning less than one-fourth of the value thereof as their award, all of

which plaintiffs allege was, in view of the submission and law under which the arbitration was held, in law fraudulent against the State and sub-divisions.

I That said Board of Arbitrators were not clothed with the powers conferred upon an arbitration called into existence under the equalization act of 1913, but under the provisions of the law applicable to this arbitration, the only issue the Tax Payer could raise and the only issue the arbitrators could determine was what was the "fair market value" of said property for taxation which property had been assessed by the Tax Receiver, but no such issue was raised before said Board because the only evidence of value submitted to the Board was that by petitioners, The State and the other taxing authorities. In this there was no conflict as to value, and there was not a scintilla of evidence introduced by the tax payer to contradict the said evidence of value of said taxable property as submitted by petitioners. That said Board of Arbitrators wholly failed to recognize that there was no conflict in the evidence, and that there was no issue as to value arising therefrom, but arbitrarily disregarded the law under which they were organized, and arbitrarily disregarded the only evidence of value submitted to them, and abitrarily rendered said award, one so insignificant in amount as to show upon the face thereof, in view of no evidence as to value, that it was the result of prejudice and bias on the part of said arbitrators, and one in law fraudulent against [fol. 203] the rights of petitioners. That had not said Board arbitrarily disregarded the only evidence of value submitted to them, they would have been compelled under the sworn evidence before them as to value to have returned an award as to the taxable value of said property as proved by petitioners as follows:

For the year 1911	$939,896,67
Instead of	112,744,83
For the year 1912	1,337,171,54
Instead of	154,550,67
For the year 1913	1,279,905,83
Instead of	187,927,98
For the year 1914	1,484,415,83
Instead of	194,138,96
For the year of 1915	1,265,298,09
Instead of	190,202,74
For the year 1916	1,423,936,00
Instead of	301,183,67
For the year 1917	1,492,659,19
Instead of	360,813,92

Wherefore, petitioners pray that this amendment be allowed and that said award be set aside.

(Signed) Pierce Bros., H. L. Franklin, W. K. Miller, Attorneys for Petitioner.

[fol. 204] Affidavit of Benj. E. Pierce to above paper omitted in printing.

Amendment allowed this 29 Nov. 1920.

Henry C. Hammond, J. S. C. A. C.

Service acknowledged of a copy of the above amendment this 29 Nov. 1920.

Callaway & Howard, Atty-. for Deft. E. H. Callaway, Executor J. B. White.

[fol. 205] EXHIBIT "A" TO AMENDMENT TO PETITION.

Testimony of J. B. Clews, Taken by Counsel for Petitioner in the Case of Richmond County and the State of Georgia vs. C. A. Steed, Tax Receiver of Richmond County

No appearance for the Defendant, C. A. Steed, as Tax-Receiver of Richmond County.

Testimony taken on July 21st, 1919.

I am a member of the firm of Henry Clews & Company, bankers. No relationship existed between my firm and Mr. James Brice White in January 1911, except that Mr. White maintained an account with us. According to our ledger, we had on hand on Jan. 1st, 1911, the following securities: (Then follows the list set forth in Exhibit "A" attached to the affidavit of Marion H. McPherson and Robert W. Dougal, Exhibit B-1 to Plaintiff's petition under the date of February 1st, 1911, wherein only the number of shares or bonds are stated and not the valuations.)

Witness continuing, said:

On January 31st, 1911, we had exactly the same securities. Against these securities Mr. White owed us on Jan. 31st, 1911, $480,635.85, and on February 1st, 1911, he owed us against these securities, $484,052.33.

On January 31st, 1912, Mr. White had on hand with us the securities listed on the memorandum attached to this deposition marked Exhibit "A" (which is the same list which appears attached to the affidavits of McPherson and Dougal under date Jan. 31st, 1912, without stating the values).

Witness continuing:

If our books showed that we had these securities on January 31st, 1921, we would of course have them on the morning of February 1st, 1912, unless of course they went out on the credit side.

In answer to the question as to what securities the witness' firm had on hand belonging to Mr. White January 1st, 1913, Jan. 1st, 1914, Jan. 1st, 1915, Jan. 1st, 1916 and Jan. 1st, 1917, the witness [fol. 206] stated that the memorandum attached to his testimony marked Exhibit "A" shows what securities the firm of Henry Clews & Co., bankers, had on hand for Mr. White on these dates, respec-

tively, the list being the same as was set forth under said dated in Exhibit "A" attached to the affidavits of McPherson and Dougal in said testimony under said dates.

My firm has had a settlement with the Executor of J. B. White and I think I probably have a copy of the receipt passing between my firm and the Executor.

The letter "m" after certain items in the list of securities, wherever it occurs, means "thousands."

The credit item on the statement dated Jan. 1st, 1917, of $8,367.17 shows that Mr. White had paid us in full all that he owed us and that there was a balance due him of that amount at that time, and we had on hand as his property on Jan. 1st, 1917, the property set opposite that item. We have been doing this character of business for Mr. White for the last ten years or more. What I mean by stating that we had the securities on the date mentioned unless they went out, was that unless they were sold in the meantime. If they had not been sold they would be on hand. Mr. White opened his account with us when he was in this country. He then went abroad and gave us the address: "c/o The American Express Co., 6 Haymarket St., London, Eng." Later, in 1912, he gave us the address: "45 Arthur Street, Belfast, Ireland." He moved around at different places on the other side. I think he finally died at Italy. You will notice in our ledger transcript that under date of February 1st, 1911, there was a balance of $478,877.33. This means that Mr. White owed that amount to us, and that subsequently this was paid up and that under date of Jan. 1st, 1917, the account had a credit of $8,367.70. It is proper to state in this connection that this was to a large extent brought about by cash remittances from Augusta, Ga. That is, on February 4th, 1911 we received from the National Bank of Augusta $32,010.88. On July 19th the same year, from the same Bank, $40,000; on Jan. 31, [fol. 207] 1911, from the Planters & Savings Bank, $36,000; on Jan. 29, 1912, from the same institution, $34,000; on May 22, 1912, from the same institution, $12,000; on Jan. 8, 1913, from the same institution, $52,000; on Jan. 4, 1913, from the same institution, $12,000; on Oct. 9, 1913, from the same institution, $20,000; on March 4, 1914 from the same institution, $15,000; on August 28, 1914, from the same institution, $20,000; on March 24, 1915, from the same institution, $25,000; on August 19, 1915, from the same institution $25,000; on Jan. 26, 1916, from the same institution, $25,000; on Feb. 28, 1916, from the same institution, $15,000; and on Sept. 4, 1917, from the same institution, $35,000.

Exhibit "A" attached to my interrogatories (which is the same as Exhibit "A" in the affidavit of McPherson and Dougal except the column of valuations) correctly shows the condition of the account of Mr. White on the several dates mentioned, and the property in our hands on these respective dates belonging to Mr. White. There is nothing there to indicate the par value of the stocks and bonds.

The par value of Reading was $50 per share; the par value of the following was $100 per share: Northern Pacific; Southern

Pacific; Louisville & Nashville; Great Northern, preferred Baltimore & Ohio; Union Pacific; Union Pacific, preferred; Atlantic Coast Line; Norfolk & Western; Virginia-Chemical Co., pref.; Atchison, Topeka & Santa Fe; National Park Bank; National Bank of Commerce; Ontario & Western; Southern Railway, pref., and Rock Island Company of New Jersey. Indeed the par value of all stocks mentioned in the attached accounts is $100 a share except Reading, which is $50 a share.

I have not found the receipt between our firm and the Executor. I have no such receipt. As the account was an open one and the securities were not taken out of our possession, there was no occasion for the Executor to give us a receipt.

[fol. 208] EXHIBIT "B" TO AMENDMENT TO PETITION

CITY OF NEW YORK,
State of New York,
County of New York:

Personally appeared before the undersigned, an officer of said State and County duly authorized to administer oaths, James B. Clews, who after being first duly sworn, on oath deposes and says that he is the same party who testified in the case of Richmond County and State of Georgia vs. C. A. Steed, Tax Receiver of Richmond County, Georgia, in deposition made by him before James McCarren, Notary Public for the State of New York and County of New York, on the 21st day of July, 1919; that Deponent is a member of the firm of Henry Clews & Company of New York; that all of the stocks listed and set forth in Deponent's said depositions as belonging to Mr. James B. White on the dates named for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, while purchased by Henry Clews & Company for the account of J. B. White, when said stocks were originally purchased by Henry Clews & Company all the certificates representing said stock were taken in the name of Henry Clews & Company, and were continuously held in the name of Henry Clews & Company, and so appeared upon the books of the corporation issuing said stock certificates, and this condition existed until either said stocks were sold by Henry Clews & Company for the account of J. B. White or until the death of said J. B. White, and subsequent to the death of said J. B. White said stocks were held in the name of Henry Clews & Company for the account of E. H. Callaway, Executor of J. B. White, until the same were delivered by said Executor to Henry Clews & Company as Agents for the Trustees under the Will of J. B. White, in the Winter of 1918. That none of the certificates representing said stocks were ever in the name of J. B. White, nor of the Executor of J. B. White, but since purchased, have always been in the name of Henry Clews & Company, as above stated; that all of the bonds purchased by Henry Clews & Company for the account of J. B. White, which are set

[fol. 209] forth in the list of securities in Deponent's said depositions, were taken possession of by Henry Clews & Company and held by Henry Clews & Company in their possession, and were never in the physical possession of J. B. White, the said J. B. White, during all of said years from 1911 to 1917, inclusive, and up to the time of his death as Deponent understood, being in Europe. That as said securities were bought from time to time by Henry Clews & Company for the account of said J. B. White, they were paid for by Henry Clews & Company largely with the funds of Henry Clews & Company and were carried in accordance with the usual custom of stocks and bond brokers, on margin, for the account of said J. B. White, the title and possession so far as the stocks were concerned, and the actual possession, so far as the bonds were concerned, being in Henry Clews & Company as security for the balance due Henry Clews & Company on the purchase price of said stocks and bonds:

That the amount stated at the head of the list of said securities for each of said years, was the amount due to Deponent's said firm of Henry Clews & Company by said J. B. White on account of the purchase price of said securities, to-wit:

On February 1st, 1911	$478,877.33
On January 31st, 1912	707,294.00
On January 1st, 1913	520,626.89
On January 1st, 1914	712,840.80
On January 1st, 1915	610,409.86
On January 1st, 1916	227,476.30

That so long as there was any balance due Henry Clews & Company by the said J. B. White on account of the purchase of said stocks and bonds, the interest of said J. B. White in said securities was only a marginal interest amounting to the difference between the market value of said securities at the time, and the amounts which said J. B. White was due to Henry Clews & Company at the same time.

This affidavit is made for the purpose of being used in any case and before any tribunal in which Deponent's said depositions may be used.

James B. Clews.

Sworn to and Subscribed before me this 5th day of August, 1919. W. W. Braden, Com. of Deeds. Filed N. Y. Co. No. 28.

[fol. 210] EXHIBIT "C" TO AMENDMENT TO PETITION

STATE OF GEORGIA,
Richmond County:

Personally appeared before the undersigned, an officer of said State and County, duly authorized to administer oahts, John W.

Dickey, who after being first duly sworn, on oath deposeth and says that deponent has been actively and continuously engaged as a broker in the stock and bond business in the City of Augusta since the year 1886; that through his dealings with the people of Augusta in the buying and seling of stocks and bonds deponent is largely familiar with the ownership of stocks and bonds by the people of Augusta, that deponent has from time to time, since he has been in the stock and bond brokerage business, bought and sold to residents of the City of Augusta many stocks and bonds, and from time to time has sold similar securities for local customers; that there are or until recently were, outstanding, approximately $1,200,000 of bonds issued by local corporations, not including municipal corporations, and probably at least 75% of these bonds, or $800,000 of such bonds are owned locally, in Augusta.

That in addition to the above, the Georgia Railroad and Banking Company has outstanding $2,500,000 of bonds, and that while more than one-half of these bonds are owned away from Augusta probably the larger part of the remaining one-half of said bonds are owned in Augusta.

That from deponent's experience in buying stocks in non-resident corporations for the citizens of Augusta he estimates that there are from two to three million dollars' worth of stocks in non-resident corporations owned by the citizens of Augusta, and that the stocks in non-resident corporations, and bonds of non-resident corporations, and bonds of local corporations, nor including municipal bonds, owned by the people of Augusta amount, in the aggregate to $4,000,000, or upwards.

[fol. 211] Deponent has from time to time sold stocks and bonds in Savannah, Macon, and Atlanta, and while he is not as familiar with the ownership of stocks and bonds in those cities as he is with such ownership in Augusta, he knows that the people of Macon own securities similar to those mentioned above, and is of the opinion that the people of Macon hold stocks and bonds in non-resident corporations to even a greater extent than do the people of Augusta; that for the same reason, based upon the name experience, he would say that the people of Savannah, Georgia, own similar securities, to wit: stocks in non-resident corporations and bonds of corporations other than municipal bonds, at least to twice the extent that the people of Augusta own such securities; that the people of Atlanta, Georgia, own similar securities to the extent of four or five times the amount of such holdings in Augusta.

The Comptroller-General's Report shows that for 1918, the returns and assessments of stocks and bonds by the people of Richmond County *was* only $482,480, deponent is sure that such figures did not represent more than 10% of the aggregate amount of stocks in non-resident corporations, and the bonds of corporations other than municipal bonds, actually owned during said year by the residents of said County; and if, as deponent is informed $400,000 of said amound represented the assessment for said year on the stocks and bonds of the estate of J. B. White, and the estate of D. F. Jack, the remaining $82,480 did not represent more than 2% of the ag-

gregate amount of such securities actually owned during said year by the people of Richmond County.

That deponent has inspected the figures contained in Table No. 12 of the Comptroller-General's Report for the years of 1916 and 1918 under the heading of "Stocks and Bonds," and from the figures shown in said reports for said years for the counties of Chatham, Fulton, and Bibb, the percentage of stocks and bonds returned in those counties for said years as compared with the amount of such securities owned in said counties would not exceed five per cent.

[fol. 212] That deponent is thoroughly familiar with the custom of parties buying stocks and bonds through brokerage or commission houses on margin where the buyer deposits or pays to the commission house only a part of the purchase price of the stocks or bonds bought for his account, and the brokerage or commission house furnishes the balance of the purchase money and holds the bonds and keeps the stock in the name of the broker until it is finally paid for.

In all of such cases where the title to the securities purchased is retained by the broker, the buyer has only a marginal interest or equity in the securities so purchased until he finally pays the balance of the purchase price in full.

This affidavit is made for the purpose of being used as evidence before the arbitrators on the arbitration of Back Taxes against the estate of J. B. White.

John W. Dickey.

Sworn to and subscribed before me this 26th day of August, 1919. Jesse T. Moore, Notary Public, Richmond Co., Ga.

[fol. 213] Exhibit C-1 to Amendment to Petition

State of Georgia,
Richmond County:

Personally appeared before the undersigned, an officer of said State and County duly authorized to administer oaths, Rufus H. Brown, of said State and County, who, after being first duly sworn, on oath deposes and says the Deponent is now, and has been since 1914, the Secretary of the Augusta Clearing House Association, which is composed of the Banks located in the City of Augusta, said County and State; that as such Secretary, Deponent, from time to time, receives reports from the various Banks belonging to said Association located in the City of Augusta as to their deposits.

That the following figures represent the aggregate amount of the deposits in all of the Banks belonging to said Association and located in the City of Augusta, said State and County, on the first of January of the years named, as the same were reported by the said Banks to Deponent as Secretary of said Association, to wit:

On Jan. 1st, 1915, said deposits in said Banks as reported were $8,296,607
On Jan. 1st, 1916, said deposits so reported were..... 10,135,480
On Jan. 1st, 1917, said deposits so reported were..... 12,827,533
On Jan. 1st, 1918, said deposits so reported were..... 17,632,542
On Jan. 1st, 1919, said deposits so reported were..... 20,145,949

That Deponent has no records showing the aggregate deposits in said Banks on the 1st of January of any year prior to January 1st, 1915.

This affidavit is made for the purpose of being used as evidence in the arbitration of the tax assessment between the Executor of the [fol. 214] estate of J. B. White, and the Tax Receiver of Richmond County, Georgia now pending.

Rufus H. Brown.

Sworn to and Subscribed before me this August 18th, 1919.
Wm. C. Gibson, Notary Public, Richmond Co., Ga.

[fol. 215] EXHIBIT "D" TO AMENDMENT TO PETITION

STATE OF GEORGIA,
Richmond County:

Personally appeared before the undersigned, E. H. Callaway, who after being first duly sworn, on oath deposes and says that he has recently made an inspection of the records of deeds mortgages and similar instruments as they appear upon the records in the office of the Clerk of the Superior Court of said County in Deed Books 6 Y's, 6 Z's, 7 A's, 7 B's, 7 C's, 7 D's, 7 E's, 7 F's, and 7 G's, upon which said books are recorded the deeds, mortgages upon real estate, and similar instruments for said County during the years of 1909 and 1910, and that he found recorded upon said books, securities in the form of security deeds, mortgages, upon real estate, and bond for titles, exclusive of banks and non-resident lenders, and not cancelled on February 1st, 1911, aggregating $1,083,342; that of said securities no inspected by Deponent, there were cancelled during the year 1911 $156,771, leaving uncancelled on February 1st, 1912 of the securities recorded during 1909 and 1910, the aggregate sum of $926,571; that of said securities so recorded, there were cancelled during the year 1912, the aggregate sum of $138,338, leaving uncancelled of said securities so recorded on the 1st of January, 1913, $478,233; that of said securities so recorded there were cancelled during the year 1913, $118,651, leaving uncancelled of said securities so recorded on the 1st of January, 1914, $629,582; that there were cancelled during the year 1914 of said securities so recorded as aforesaid, $64,781, leaving uncancelled on the 1st of January, 1915 of said securities so recorded as stated above, $564,801.

That while Deponent noted and indicated a large number of cancellations during the years following the year 1914, he has not tabulated the same.

[fol. 216] That where Deponent found the recorded evidence of the debt set forth in a bond for title, he took the maturity dates of the notes therein described as the date of the cancellation, except in instances where the actual cancellation was written across the face of the record of the bond for title, when the date of such cancellation was taken in making up the figures stated above.

This affidavit is made for the purpose of being used as evidence before the arbitrators in the arbitration of back taxes upon the estate of J. B. White.

E. H. Callaway.

Sworn to and Subscribed before me this 20th day of August, 1919. H. C. Howard, Notary Public Richmond County, Ga.

[fol. 217] EXHIBIT "E" TO AMENDMENT TO PETITION

STATE OF GEORGIA,
Richmond County:

Personally appeared before the undersigned, an officer of said State and County duly authorized to administor oaths, James S. Bussey, Jr., and Henry G. Howard, both of said County and State, each of whom being first duly sworn, on oath deposes and says that recently Deponents have jointly examined the Deed Books in the office of the Clerk of the Superior Court of Richmond County, Georgia from 7 H's through 7 Z's, inclusive, and from 8 A's through 8 D's, and a portion of Deed Book 8 E's, covering the record of deeds and mortgages up to January 1st, 1915, said books so examined be Deponents covering the period of the record of deeds, mortgages, and other similar instruments from February 1st, 1911, to January 1st, 1915; that Deponents, in making said examinations, checked and tabulated the amount of security deeds, mortgages on real estate, and the evidence of indebtedness set forth in bond for titles which were recorded during said perior on said books, and noted the cancellation of the same, and that the aggregate amounts of such securities discovered and checked by them on said records and tabulated by them jointly, belonging to resident lenders and not including securities given to banks, charitable institutions or non-resident lenders, are as follows, to wit:

Aggregate amount not cancelled Jan. 1,						1912.....	$606,612
"	"	"	"	"	"	1913.....	1,373,853
"	"	"	"	"	"	1914.....	1,964,015
"	"	"	"	"	"	1915.....	1,872,698
"	"	"	"	"	"	1916.....	682,712
"	"	"	"	"	"	1917.....	434,264

This affidavit is made for the purpose of being used as evidence on the hearing in the arbitration of back taxes on the estate of J. B. White.

James S. Bussey, Jr., Henry G. Howard.

Sworn to and Subscribed before me this August 20, 1919.
Thos. J. O'Leary, Notary Public, Richmond County, Ga.

[fol. 218] EXHIBIT "F" TO AMENDMENT TO PETITION

STATE OF GEORGIA,
Richmond County:

By the Court of Ordinary for said County to William Martin, R. D. Crocker, Geo. P. Bates, R. E. Allen, and Chas. E. Whitney:

These are to authorize you, or any three or more of you, to repair to such places in said County as you shall be directed unto by Linwood C. Hayne, Executor of all and singular the Real Estate, Goods and Chattels, Rights and Credits of William E. Benson, late of said County, deceased, wheresoever any of the Real Estate, Goods and Chattels of the said deceased are, or do remain within the said County and which shall be shown unto you by the said Executor and there view and appraise all and every the said real estate and Goods and Chattels, being first sworn to make a true and perfect inventory and appraisement thereof, and to cause the same to be returned under your hand, or any three or more of you, to the said Executor within sixty days from the date hereof.

In testimony thereof, I hereunto affix my hand and seal, this 7th day of September, 1916.

Alexander R. Walton, Ordinary. (Seal.)

You, Geo. P. Bates, R. E. Allen, and Charles E. Whitney do swear that you will make a just and true appraisement of all and singular the Real Estate, Goods and Chattels of William E. Benson, deceased, as shall be shown to you by Linwood C. Hayne, Executor of the said deceased's estate and that you will return the same certified under your hand, unto the said Executor within the time prescribed by law.

Geo. P. Bates, R. E. Allen, Chas. E. Whitney.

Sworn to and subscribed before me this 23rd day of November, 1916. H. Hal Hill, Notary Public, Richmond County, Ga.

[fol. 219] Inventory and Appraisement of the Estate of William E. Benson, Late of Richmond County, Georgia, Deceased

House and lot, 842 Greene, St., Augusta, Ga., being the late residence of said deceased, said premises conveyed to him by M. C. Stainer, individually and as Trustee, by deed duly recorded in the Clerk's Office of the Superior Court of Richmond County, Georgia, in Book 6 D's, Pages 28 to 30.....	$10,000.00

Lot of household and kitchen furniture and furnishings, contained in the above described residence...	700.00
One Pair Gentleman's Diamond Cuff Buttons.....	150.00
Gentleman's watch & chain, $100.00; Gentleman's Diamond Ring (2 Diamonds and 1 Cat Eye $400.00)	500.00

The above have been delivered by L. C. Hayne, Executor, to the Residuary Legatee.

One Pink Stone Ring	2.50
One Pearl Ring	2.50
One Diamond Cluster Brooch	300.00
One Diamond Crown Brooch	250.00
One Diamond Cross (Large)	1,500.00
Seventy shares preferred stock of the Orangeburg Manufacturing Company, of Orangeburg, S. C., at $10	700.00
Nine shares Second preferred Stock of the Orangeburg, Mfg. Co., Orangeburg, S. C., at $5.00.....	45.00
One Hundred shares Stock of the Warren Manufacturing Co., Warrenville, S. C. (Preferred) at $87.50	8,750.00
Two Hundred shares of the Planters Loan & Savings Bank, stock (Par Value $10.00) at $40.00.....	8,000.00
Cash on hand	92,587.38
	$123,487.38

[fol. 220] STATE OF GEORGIA,
Richmond County:

The undersigned, duly appointed appraisers of the estate of William E. Benson, late of said County, deceased, being first duly sworn to perform their duty according to law, do hereby certify upon oath that, so far as was presented or is known to us, the foregoing contains a true inventory and appraisement of the property of said estate, to the best of our judgment and understanding.

Given under our hands and official signature and seals this 23rd day of November, A. D. 1916.

Geo. P. Bates (L. S.), R. E. Allen (L. S.), Chas. R. Whitney (L. S.), Appraisers.

STATE OF GEORGIA,
Richmond County:

Personally appeared, Before the undersigned Linwood C. Hayne, Executor of the estate of William E. Benson, late of said County, deceased, who, being duly sworn, says that the within and foregoing inventory is just, true and correct, and contains a true account of all

the Goods and Chattels, Rights and Credits, and all Real Estate of said deceased that have come to his hands, possession or knowledge.

L. C. Hayne.

Sworn to and Subscribed before me this 23rd day of November, A. D. 1916. H. Hal Hill, Notary Public, Richmond County, Georgia.

Recorded Inventory and Appraisements "Z" pages 328-329.

[fol. 221] EXHIBIT "G" TO AMENDMENT TO PETITION

STATE OF GEORGIA,
Richmond County:

Personally appeared before the undersigned, an officer of said State and County, duly authorized to administer oaths, E. H. Callaway, who after being first duly sworn, on oath deposes and says that he has recently examined the Books of Inventories in the office of the Ordinary of Richmond County, Georgia, showing the inventories of estates which have been administered in said County and which have been recorded, from the year 1913 to the year 1918, inclusive; that Deponent took figures only from estates exceeding in value $10,000, and tabulated from said inventories only the reported money in bank, solvent and secured notes, taxable bonds, and stocks in non-resident corporations, and that thus tabulating the figures taken from the inventories of 66 estates during said years, he found the aggregate amount of cash in bank, solvent and secured notes, taxable bonds and stock in non-resident corporations as reported on the inventories of said 66 estates to be $1,579,122, and that said inventories so examined, tabulated and included in the above amount, did not include the inventory of the estate of J. B. White.

Deponent further swears that from said examination of said inventory Books of the Court of Ordinary of said County for said period, he tabulated cash in bank, solvent and secured notes, taxable bonds and stock in non-resident corporations in 18 estates, the inventories of which appear from said books for said years, not including the inventory of the estate of J. B. White, and the aggregate amount of said cash in bank, secured and solvent notes, taxable bonds and stock in non-resident corporations of said 18 estates, aggregated $1,180,489.

[fol. 222] Said securities and credits in the inventories of said eighteen estates being distributed or classified as follows, to wit: Stocks in non-resident corporations, $421,943; taxable bonds, $191,690; solvent and secured notes, $323,648; cash in bank, $243,208, making a total as stated above for said 18 estates of $1,180,489.

This affidavit is made for the purpose of being used in the hearing before the arbitrators in the arbitration of back taxes on the estate of J. B. White.

E. H. Callaway.

Sworn to and subscribed before me this August 23, 1922.
P. T. Chaese, Notary Public, Richmond County, Ga.

[fol. 223] EXHIBIT "H" TO AMENDMENT TO PETITION

Judge Callaway: I introduce the Comptroller General's printed report for year 1914, Page 192; money and solvent debts and totals the whole state for the two years 1913-1914. On the next to the last column on the next page I have turned down here has the comparative statement of each county for the years 1913-1914. At the bottom is the total for the state of Georgia for the two years.

I now tender the same kind of report, which I have marked in the same way for the years 1911-1912; table No. 12 has got stocks and bonds and table No. 11 has solvent notes and accounts.

I tender the same report of the Comptroller General's for the year 1916; tables No. 11 and 12. And same tables for 1918.

I now tender you the report of the Special Tax Commission authorized under the Legislature of Georgia, of which Gov. Dorsey was a member and I was a member, signed by each of us. I call your special attention to the first general assessments in Georgia.

I call your attention to the next page turned down there, which states how much money was in bank the first of January 1918, and how much notes and solvent debts were returned. There is one page which I have marked, page 13, giving the percentages again, the last column I call your attention to.

I now introduce these affidavits, Mr. Clew's affidavit; affidavit of Jno. W. Dickey; affidavit of Rufus H. Brown; affidavit of E. H. Callaway; joint affidavit of Jas. S. Bussey, Jr. and Henry G. Howard; affidavit of E. H. Callaway.

[fol. 224] C. A. STEED, being duly sworn, testified as follows:

Direct examination:

Mr. Ben Pierce: We wish to make an objection to the introduction of the Comptroller General's reports and the report of the Tax Commission and of these affidavits, on the ground that none of them have any probate value in the proceedings that you are hearing; they simply state certain things, but they do not state anything showing the value of the property in question, and which has been assessed and now under consideration. The sole question is what is the value of the property.

Q. You are the tax receiver of Richmond County?
A. Yes, sir.
Q. You were in 1918?
A. Yes, sir.

Q. You remember the assessment which was placed upon the securities of the estate of J. B. White?

A. $250,000.00.

Q. Was that included under stocks and bonds? Did you separate it at all?

A. They made an assessment of $200,000.00 as appears on the books for stocks and bonds and $50,000.00 for notes and mortgages and cash. I think that is the way it appears.

Q. You remember the Jack estate?

A. Yes, sir.

Q. You recollect what that was assessed for?

A. $150,000.00.

Q. That was under stocks and bonds?

A. It went under stocks and bonds.

Q. Then $250,000.00 was from the estate of White and $150,000.00 from the estate of Jack and was returned last year?

A. Yes, sir; that is $350,000.00.

Q. Then if the entire returns of stocks and bonds for Richmond [fol. 225] County last year was $482,000.00, how much did that leave for the balance of the county?

A. $132,000.00.

Q. For the entire balance of the county outside of these two estates?

A. Yes, sir.

Q. You have been tax receiver for Richmond County for how long?

A. About six or seven years.

Q. Not longer than that?

A. I have been assistant to my father since 1891. I have been in the office since then.

Q. When did your father die?

A. He died in 1908.

Q. You have been tax receiver since then?

A. Yes, sir.

Q. That has been ten years then?

A. Yes, sir.

Q. Did you follow literally the figures of that affidavit there in the assessments?

A. In a hurry we put some figures down there, and I think probably $130,000.00, $140,000.00 or $150,000.00 that these figures won't tally with.

Q. Too much or what?

A. Yes, sir; too much, it was through some error.

Q. Wasn't it $200,000?

A. I think it was something like $150,000.00.

Q. That is after including the National Bank Stock in there?

A. Yes, sir.

Q. You still have $150,000 more than these affidavits show?

A. My assessment on them amounts to about $150,000.00 more than Clew & Co.'s assessment.

Q. You mean the affidavits of these men we brought here?

A. Yes, sir. The difference is about $130,000 to $150,000 against the White Estate, more than these figures show.

Q. You say that was done in a hurry in making the assessment?

[fol. 226] A. Yes, sir.

Q. You added on about $150,000.00 more than you should?

A. Yes, sir.

Q. Have you ever in making an assessment undertaken to assess it to the full market value?

A. No, sir; we had a rule not to assess it at the full market value.

Q. Have you ever done it before?

A. In starting out, where there was no affidavit, I would probably make the assessments at the full market value, but whenever it got down to an affidavit I never made it at the true market value, but before I would most always take the first assessment and put it down, and if the parties I was dealing with forced me to arbitrate I settled on some basis later on lower than the full market value.

Q. Is any property assessed here in this county at the full market value?

A. It is not intended to. The Board of Assessors never go over two-thirds valuation. On these mortgages and other stocks they take it 50% on the dollar. That is their rule. I have not been doing that, that has been done by the Board of Assessors. Since I have been in office, the Board of Assessors have been in six years.

Q. You have never undertaken to assess any property at the full market value?

A. No, sir. When we made these assessments it was generally in accordance with their property value.

Q. County property doesn't do that?

A. I don't think they hit the county property more than 50% on the dollar.

Q. Doesn't it amount to 33⅓%?

A. It don't generally run up to more than 33⅓ as a general proposition, but they try to treat it on a 50% basis; but as a general proposition all of that property is lower in assessment.

[fol. 227] Q. You know of other estates that have been administered in the Court of Ordinary in the last three or four years?

A. Yes, sir; in the last three years.

Q. Several large estates?

A. Yes, sir; there has been several estates there.

Q. Have you undertaken to assess any of these estates except this one for back taxes?

A. I have not; it has not been brought to my attention. I begin to see I will have to get at them.

Q. So far you have not gotten after any of these estates?

A. No, sir.

Q. You have never been ordered by the Comptroller General to go after any of them?

A. No, sir.

Q. You did have one estate that you had some adjustment in?

A. Yes, sir; that was the Benson estate. We had instructions from the County Commissioners; I had forgotten that.

Q. Was it arbitrated?
A. No, sir.
Q. How was it settled?
A. We settled it. I settled it with Mr. Hamilton Phinizy and Messrs. Pierce Bros.
Q. Who did they represent?
A. The Benson estate. We started out with the full market value.
Q. Did you make any assessment?
A. Yes, sir; we always make an assessment; generally make the assessment to start off with.
Q. You had no arbitration?
A. No, sir; had no arbitration.
Q. On what basis did you finally settle?
A. I think about 30¢ or 33¢ on the dollar. I think it was about $100,000.00 and I think we settled for about 33¢ on the dollar.
Q. Pierce Bros. represented the estate and you and Mr. Bohler represented the County?
A. Yes, sir.

[fol. 228] Cross-examination:

Q. Did you ever report any of these instances that Judge Callaway has asked you about to the Comptroller General?
A. No, sir; you mean make a report as to what was over it?
Q. Yes?
A. No, sir; to be candid with you I have never examined these records.
Q. You have testified you were familiar with all of these estates and knew all about them?
A. No, sir.
Q. Well, you knew of them in a general way?
A. Yes, sir.
Q. I ask you if you ever reported any of these estates to the Comptroller General?
A. No, sir.
Q. The State authorities, outside of its being represented by you, don't know anything about this?
A. Up until the present year I don't think I had anything to do with it, until this case came up and the law was changed, along last August, and I didn't know that law until way in December.
Q. Did you report any of these at all to the Comptroller General: this condition you have testified about?
A. No, sir.

Mr. Pierce: Your Honors will understand of course we don't propose to waive any of our rights as to the testimony and don't propose to annoy the board with constant objections to testimony, but when through with the witness it is a rule to move to exclude all the testimony. We are asking that all of the testimony of Mr. Steed be excluded. The question is as to the value of the property now involved, and what has been done with the Benson estate or the Jack estate is not now before this Board.

Redirect examination:

Q. Mr. J. B. White's taxes paid here during all these years?
A. Yes, sir.
[fol. 229] Q. How high did he rank with reference to all the other taxpayers?
A. He was the largest taxpayer on real estate.
Q. Approximately how much?
A. $600,000.00, close on to a million dollars' worth of real estate, taxing two-thirds.
Q. You stated the assessors assessed the securities of this estate at $250,000.00, $50,000.00 of which went to mortgages and notes?
A. Yes, sir; I think it was divided up that way.

Cross-examination:

Q. Did you ever have a taxpayer come in to make his returns to you and state in answer to this question, I would like to call your attention to it, a question every taxpayer is required by law to swear and subscribe to, question No. 17? (Reading:) Did you ask them that question and a taxpayer tell you that he had $100,000.00 and you tell him "I will assess you at $200,000.00?"
A. No, sir.
Q. If I make a return of $100,000.00 you put me down at $100,000.00?
A. Yes, sir.
Q. If I come to you as a taxpayer and make that return, and say I have a million dollars you put me down at a million dollars?
A. Yes, sir; it goes before the Board of Assessors.
Q. I mean as far as you are concerned?
A. Yes, sir.

Judge Callaway: I offer a certified copy of the estate of Benson and certified copy from Mr. Bobler of the assessment put upon it.
Mr. Pierce: We object to it, as having no bearing on the case.
Judge Callaway: I now introduce the contract between Pierce Bros. and the County Commissioners, date- the 14th of October, 1915, and next the meeting of the County Commissioners on the 28th day of June and the minutes of their meeting, and a certified copy of their resolutions, dated July 18th, 1917.

[fol. 230] EXHIBIT "H"

The report of the Special Tax Commission appointed under the authority of the Legislature of Georgia, and made to the General Assembly of the State at the Summer Session of 1919, was introduced in evidence showing the following facts:

		Valuation	Assessment	Percentage of assessment
All Property in Georgia.	1912	$2,382,000,861	884,358,342	36% 64% unrec'd
	1918	4,258,919,048	1,079,261,223	25% 75% unrec'd
Real Estate.....	1912	804,983,002	431,329,671	47% 53% unrec'd
	1918	1,620,958,188	569,204,457	35% 65% unrec'd
Farm Implements and machinery	1912	23,176,865	10,150,789	43% 57% unrec'd
	1918	41,428,646	11,780,344	28% 72% unrec'd
Live Stock.....	1912	106,429,447	43,264,805	40% 60% unrec'd
	1918	190,242,632	57,959,275	30% 70% unrec'd
Public service corporations	1912	335,660,011	138,021,114	39% 70% unrec'd
	1918	917,908,477	199,278,855	22% 78% unrec'd

Extract from the Report Contained on Pages 9 and 10

"2nd. The property returned is not equitably apportioned between the various classes of property. It appears to us, from a study of the Census Bureau's reports as described above, that the classes of property mentioned below returned for taxation in 1918 approximately the following percentages of their real values:

Banks	70%
Real Estate	35%
Live Stock	30%
Farming implements and Mchy.	28%
Public Service Corporations.....	22%

The last item, "public service corporations," includes railroads, street railways, shipping, water works, telephone companies, express companies, etc., this figure, 22 per cent being obtained by taking the figures for this entire class of public service corporations from the U. S. Census reports and from the Comptroller General's reports. With reference to the railroads alone, a separate calculation has been made for us by the railroad commission, which indicates that the total railroad property in Georgia is worth approximately $275,000,000 and by subtracting the value of the railroads which are exempt from ad valorem taxation and comparing the result with the assessed value of the railroads as contained in the Comptroller General's report we reached the conclusion that the railroads as a whole are paying on approximately 42½ per cent of their total value.

[fol. 231] "We have no date, upon which to base a similar estimate of merchandise. We do know, however, that only about $53,000,000 was placed upon the tax roll in 1918, and we have good reason, we think, for believing that there is that much in one Georgia City."

"Again, we are unable to form any well grounded conclusions as to the value of money, notes and accounts, bonds and taxable stocks in the State. It appears, however, that there was $322,000,000 on deposit in the Banks of the State in September, 1918, according to the Bankers' Encyclopaedia. We know from the tax digests that

there was returned last year, in round numbers, in money, notes, mortgages, accounts, bonds and taxable stocks $65,000,000. This condition would be ludicrous if it was not absolutely distressing to all fair-minded citizens."

Proportionate Assessment of Real Estate, Personal Property, and Money and Credits in Georgia, 1918

Real estate	Personal property	Money and credits
$569,394,457	$349,588,021	$65,613,596
53%	32%	6%

of Total Assessment of Property.

Table Showing Decrease in Proportionate Assessment of Money Since 1875

	Assessed value of all property in Georgia	Assessed value of money and credits	Perc't'ge of money & credits to total
1875	$261,755,841	$37,138,943	15 1/5%
1880	261,424,651	29,333,736	11 3/5%
1890	451,828,945	38,933,258	9 3/8%
1900	433,323,691	34,730,595	8%
1910	766,787,139	48,242,841	6 1/7%
1918	1,979,261,333	65,613,596	6 1/14%

[fol. 232] Exhibit "J" to Amendment to Petition.

State of Georgia,
Richmond County:

Whereas, The Board of Commissioners of Roads and Revenues of Richmond County, are in possession of certain facts which lead them to believe that there is considerable property in Richmond County, and having a situs for the purpose of taxation in said County, but which has never been returned for taxation and on which no taxes have ever been paid; and,

Whereas, it is the duty of this Board to see that all persons enjoying the benefits of the laws of this State and resident thereof, or who have property which has a situs for the purpose of taxation in this County, should be made to bear their pro rata share of taxes for the maintenance of the Government; and,

Whereas, in order to determine the question of whether or not there is such property in Richmond County subject to taxation it is necessary for said Board to employ counsel; and,

Whereas, it has retained the law firm of Pierce Bros., for this purpose. Now, therefore,

This contract, made and entered into between Richmond County, through the Board of Commissioners of Roads and Revenues of

Richmond County, party of the first part, and Pierce Bros., Attorneys of said County, parties of the second part;

Witnesseth, That in consideration of services rendered and to be rendered by said parties of the second part, in enforcing the payment of taxes upon property which has not heretofore been returned for taxation or taxed, the said party of the first part hereby agrees to pay said parties of the second part, one third of any gross amount which it may recover as taxation upon property not heretofore taxed.

The said parties of the second part are to perform all services necessary for the purpose of carrying out this contract, and they are hereby authorized and empowered to institute such proceedings as they may deem necessary to enforce the payment of taxes upon property in said County not heretofore taxed. If in the event there should be no recovery in such proceedings, then the said parties of the second part are not to receive any remuneration for their services, with the understanding however, that the said parties of the first part agree to pay all traveling expenses incurred, and also all court costs which may have been incurred in the prosecution of said proceedings.

In witness whereof, the said party of the first part has caused these presents to be signed by its chairman and ordered the same spread upon its minutes this 14th day of October, 1915; and the said parties of the second part have also hereunto set their hands and seals the day and year above written.

Board of Com. of R. & R. of R. County (L. S.), By H. R. Pund (L. S.), Chairman. Pierce Bros. (L. S.), By Benj. E. Pierce (L. S.).

Signed, sealed, and delivered in the presence of: Lucile Von Derlieth, Notary Public, Richmond Co., Ga.

[fol. 233] GEORGIA,
Richmond County:

I hereby certify that the foregoing is a true and correct copy of the minutes of the Board of Commissioners of Roads and Revenues of Richmond County as they appear in the Book of Minutes Pages 65 and 66.

Loyd T. Hall, Clerk Board of Com. R. & R., Richmond Co., Ga. Aug. 18, 1919.

[fol. 234] "Mr. W. B. Pierce, of Pierce Bros., in response to the notice sent to appear before the Board with reference to further subjecting property to taxation, was present.

"After hearing from Mr. Pierce as to the proposed tax cases in sight, Mr. Turner made a motion that Pierce Bros. be directed to proceed with tax cases under their contract of October 14th, 1915. On further motion it was resolved, Pierce Bros. consenting, that their contract of said date be reformed so as to read * * * It is agreed that

Pierce Bros. shall receive for the subjecting of any and all property for taxation not now taxed in said County 20% of the taxes collected for each of the first three years after the right to tax is established through them, and should they be able to collect any back taxes, they shall have 20% of all amounts so collected."

"Mr. Holley seconded the same, and being put, was carried."

STATE OF GEORGIA,
Richmond County:

I hereby certify that the foregoing is a true and correct extract from the minutes of a special meeting of the Board of Commissioners of Roads and Revenues of Richmond County held August 9th, 1917, and recorded in the book of minutes Page 102.

(Signed) Loyd T. Hall, Clerk to Board of Commissioners Roads and Revenues, Richmond County, Ga. Aug. 18, 1919.

[fol. 235] It having been brought to the attention of the Board that the Tax Receiver of Richmond County has not required the Executor of the Estate of J. B. White, deceased, to make a return in pursuance to notice given on June 4th, 1918.

Now, therefore, be it resolved, that the Contract made with Pierce Brothers, of August 1917, be, and the same is hereby ratified and confirmed, and they are directed to institute such legal proceedings as is necessary to require an assessment for taxation of the property described in said notice of June 4th, 1918, a list of which property is hereto attached marked Exhibit "A." and made a part of this Resolution. The fee to be paid said Pierce Bros., for services so rendered is to be twenty per cent (20%) of all back taxes which may be collected upon said property.

(Signed) H. R. Pund, Chairman. H. A. Norrell, Secretary.

Clerk to Board's Certificate omitted in printing.

[fol. 236] Exhibit J to Amendment to Complaint—Continued

No. 3

Copy of Demurrers and Amended Demurrers filed by E. H. Callaway, as Executor of J. B. White, in the following case:

STATE OF GEORGIA

vs.

E. H. CALLAWAY, as Executor of J. B. White; PERCY E. MAY, CHAS. D. Carr, and Thomas S. Gray, Arbitrators; C. A. Steed, Tax Receiver, and Chas. S. Bohler, Tax Collector of Richmond County

Equitable Petition Filed to the November Term, 1919, of Richmond Superior Court

[fol. 237] STATE OF GEORGIA

vs.

E. H. CALLAWAY, Executor of J. B. White; C. A. STEED, Tax Receiver of Richmond Co.; Charles S. Bohler, Tax Collector Richmond County, and Percy E. May, Charles D. Carr, and Thomas S. Gray, Arbitrators

Equitable Petition in Richmond Superior Court, November Term, 1919

DEMURRER OF E. H. CALLAWAY—Filed Dec. 8, 1919

Now comes E. H. Callaway, Executor of the Will of J. B. White, one of the defendants in the above stated cause, at the appearance term thereof, and before answering plaintiff's petition, demurs thereto upon the following grounds:

1. Because said petition sets forth no legal or equitable cause of action.

2. Because said petition is brought in the name of the State of Georgia to set aside a tax arbitration proceeding between E. H. Callaway, Executor of J. B. White, as a taxpayer, and C. A. Steed, Tax receiver of Richmond County, and the parties assuming to represent the State of Georgia in said proceeding have no legal authority to bring such a proceeding in the name of the State of Georgia for the reason that, under the statutory laws of Georgia, providing for assessments for taxes and arbitrations thereon, the State of Georgia in its sovereign capacity as well as the other taxing subdivisions of the State had representation in said arbitration proceedings solely by the Tax Receiver of Richmond County.

3. Because the said arbitration proceeding sought to be attacked and set aside was, under the express statutory laws of the State, a

controversy between C. A. Steed, Tax Receiver of Richmond County, representing the State of Georgia, and the other taxing authorities of Richmond County, and E. H. Callaway, as Executor of J. B. White as a taxpayer, and said arbitration proceedings could only be legally attacked by a proceeding brought either by the said C. A. Steed, Tax Receiver of Richmond County, or the said E. H. [fol. 238] Callaway, Executor of J. B. White.

4. Because it appears from said petition that the evidence produced before the Board of Arbitrators, at the hearing, is not set forth in full in said petition, nor in the exhibits attached thereto, and it does affirmatively appear that the testimony is briefed, in some instances, and omitted entirely in other instances; and in such cases of attack upon the award of arbitrators, the law requires that it must appear that all of the evidence submitted to the arbitrators is set forth in full.

5. Because the petition attempts to attack the validity of the arbitration proceedings and award of the arbitrators without setting forth a copy of the arbitration proceedings in full, or a copy of the award made by the arbitrators.

6. Because it does not appear that the award of the arbitrators which is attacked and sought to be set aside was the result of either fraud, accident or mistake.

7. Because it appears from said petition that the plaintiff through its counsel in this cause, after full knowledge of the alleged errors in the oath administered by the Tax Receiver to the arbitrators, and after full knowledge of the alleged disqualification of the arbitrators, appeared before said Board of Arbitrators and conducted the case for C. A. Steed, Tax Receiver of said County, who represented the State of Georgia in said arbitration, and introduced evidence and argued the case before said arbitrators, and by said conduct expressly waived any attack which the State or its legal representatives had the right to make upon the form of oath which had been administered to the arbitrators by C. A. Steed, Tax Receiver, and, in like manner, expressly waived any objection which might have been raised to the qualification of the said P. E. May, the arbitrator selected by the Taxpayer, or to the qualification of C. D. Carr, the umpire selected by the Commissioners of Roads and Revenues of Richmond County.

[fol. 239] 8. Because a party will not be permitted to deliberately speculate with an arbitration proceeding by participating therein, with full knowledge of all the facts, and if the award is not satisfactory, then attack the award in the Courts upon the grounds and facts known prior to the arbitration.

9. Because the oath administered to the arbitrators, and of which complaint is made that it was not the proper oath for said arbitrators, was prepared and administered by C. A. Steed, the Tax Receiver of Richmond County and the representative in said arbitration of the sovereign State of Georgia, as well as of the other taxing

authorities of the State, for Richmond County, and the State of Georgia cannot legally complain to the detriment of the taxpayer of the official acts and conducts of its own legal representative in such a proceeding.

10. Because the alleged disqualifications as to the arbitrators, P. E. May and Charles D. Carr, do not amount in law to any legal or valid disqualification, and are not sufficient in law, even if they had not been waived by counsel for the State, by appearing before said arbitrators and participating in the arbitration proceedings to set aside the award.

11. This defendant specially demurs to Paragraphs 5, 6 and 7 of plaintiff's petition, which undertake to set forth the contentions and arguments of counsel before the arbitrators, as wholly irrelevant, impertinent and immaterial, and moves that the same be stricken.

12. This defendant demurs specially to the allegations of Paragraph 8 of Plaintiff's petition, which undertake to set forth the manner in which the arbitrators arrived at the result of their award, upon the grounds that the same are wholly irrelevant and immaterial, and constitute no valid or legal reason for setting aside the award made by said arbitrators.

13. This defendant further demurs generally to said petition because it appears upon the face thereof to be an effort to illegally deprive the estate of this defendant's testator of the right provided by the statute laws of the State of Georgia to arbitrate the assess- [fol. 240] ment by the Tax Receiver of Richmond County.

14. Because said proceeding appears, upon the face thereof, to be a deliberate attempt and effort on the part of the plaintiff and the attorneys representing the State of Georgia to deprive the estate of this defendant's testator of the right and privilege of having the assessment made by the Tax Receiver of Richmond County submitted to arbitration, as provided by the statutory laws of the State, thereby depriving the estate of this defendant's testator of due process of law, in violation of Paragraph 3, Section 1, Article 1 of the Constitution of Georgia, as set forth in the Civil Code, Section 6359.

15. Because said proceeding, as set forth in plaintiff's petition and the original petition of which it is supplementary, is a deliberate effort on the part of the plaintiff and the attorneys representing the State of Georgia in said proceeding, to have the assessment made by the Tax Receiver of Richmond County against the estate of this defendant's testator confirmed and made binding under a decree of court, without giving to this defendant, as executor of said estate, an opportunity to be heard or to have said assessment submitted to arbitration as provided by the statute laws of the State, and is an attempt to deprive the estate of this defendant's testator of property without due process of law, and if successful, will deny to said estate the equal protection of the laws of the State of Georgia in violation of the provisions of the Fourteenth Amendment of the Constitution of

the United States, as set forth in the Civil Code of said State, Section 6700.

16. Because said proceedings, as set forth in plaintiff's petition and the original petition of which it is supplementary, is a direct attempt on the part of plaintiff and the Attorneys representing the State of Georgia in said proceeding, to have the assessment in this case, which was arbitrarily made by the Tax Receiver, without regard to the values or manner of assessments upon other property and other similar property owned within the State of Georgia, confirmed [fol. 241] and made binding against the Estate of this defendant's testator, without giving this defendant, as Executor of said Estate, an opportunity to be heard or to have said assessment submitted to arbitration, as provided by the Statutory laws of the State, and if successful, would deprive this defendant of the uniformity in the operation of the Tax laws of the State of Georgia and would be violative of the provisions of Paragraph 1, Section 2, of Article 7 of the Constitution of Georgia, as set forth in the Civil Code, Section 6551.

Callaway & Howard, Attorneys for Defendant E. H. Callaway, Executor of J. B. White.

[File endorsement omitted.]

IN SUPERIOR COURT OF RICHMOND COUNTY

ORDER SUSTAINING DEMURRER

After hearing argument the foregoing demurrer and the amended Demurrer of the Defendant, E. H. Callaway, Executor of J. B. White, are hereby sustained, and the Restraining Order heretofore granted is dissolved, and Plaintiff's petition, as amended, is hereby dismissed. Ordered further, that this Order act as a supersedeas until said case is finally determined.

This Nov. 29th, 1920.

Henry C. Hammond, J. S. C. A. C. Min. #72, p. 54.

[fol. 242] [Title omitted]

Equitable Petition to the November Term 1919 of Richmond Superior Court

AMENDED DEMURRER—Filed April 2, 1920

The Attorneys for the Petitioner in the above stated cause having at the March Term 1920 of said Court amended the Petition in said cause and having had the County of Richmond made a party plaintiff by Intervention in said cause, now comes E. H. Callaway, Execu-

tor of the Will of J. B. White, one of the Defendants in said cause, at the March Term 1920 of said Court and renews his original demurrer *of* file in said cause against said petition as amended, upon each and every ground thereof, and demurs further to said petition as amended as follows:

17. This Defendant demurs specially to paragraphs 2, 3 and 4 as setting forth no facts and says that the conclusions therein are not sound in law and constitute no valid or legal reason for setting aside the award of said arbitrators, and that the same are irrelevant and immaterial.

18. This Defendant demurs specially to Paragraph 5 of said Amendment and says that the reasons therein given do not comply with the requirement of the law that where an award of arbitrators is attacked, the testimony must be set forth in full and the petition as amended having failed to set forth said testimony in full, said Petitioner is not entitled to the relief prayed for.

19. This Defendant demurs specially to pragraphs 6, 7, 8 and to the affidavit of M. C. B. Holley attached to said amendment and says that neither said paragraphs of said amendment nor said affidavit constitute any valid or legal reason for the disqualification of the said C. D. Carr as an arbitrator or umpire in said arbitration proceedings, and the statement therein contained as to the alleged expression by the said C. D. Carr as to his views or opinion about the [fol. 243] taxing of the estate of this Defendant's testator for back years, appears on its face to be purely hearsay, and would be inadmissible in evidence.

Wherefore, This Defendant renews his prayer that the said original demurrer, as well as this amended demurrer, be sustained upon all of the grounds therein contained, and that said petition as amended be dismissed.

Callaway & Howard, Attorneys for E. H. Callaway, Exr. of J. B. White, One of the Defendants in said cause.

[File endorsement omitted.]

[fol. 244] [Title omitted]

Equitable Petition Filed to the November Term, 1919, of Richmond Superior Court

RENEWAL OF DEMURRERS—Filed Nov. 29, 1923

The Plaintiffs in the above stated cause having further amended their petition, now comes E. H. Callaway, Executor of J. B. White, one of the Defendants in said cause, and renews his original and amended demurrer to said petition as amended, upon each and every ground thereof, and upon the following additional ground.

20. Because the tax arbitration proceeding sought to be set aside was between E. H. Callaway, Executor of J. B. White as a taxpayer, and C. A. Steed, Tax Receiver of Richmond County, the later being the officer designated by law to represent the State of Georgia and all of its subordinate taxing divisions in such proceedings, and neither the State of Georgia nor the County of Richmond can legally bring a proceeding in its own name, under the facts as set forth in the petition as amended, attacking said arbitration proceeding, or the award made by the arbitrators, and neither the State of Georgia nor the County of Richmond has any right or cause of action against this Defendant.

This Nov. 27, 1920.

Callaway & Howard, Attys. for E. H. Callaway, Executor J. B. White, Deft.

[File endorsement omitted.]

[fol. 245] STATE OF GEORGIA,
Richmond County:

BILL OF EXCEPTIONS AND ORDER SETTLING SAME

Be it remembered that C. A. Steed did on the 28th day of July, 1919, assess for taxation various and sundry stocks and bonds belonging to the estate of J. B. White, which had never been returned for taxation for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917 inclusive, basing the valuation placed thereon upon sworn affidavits produced to him by Counsel representing the State of Georgia and Richmond County in a certain mandamus proceeding brought to compel him to proceed to assess such property. After having assessed said property for the years named he gave E. H. Callaway, the Executor of the estate of White, notice of such assessment, as the Statute of said State required; whereupon the said Callaway, as Executor, wrote the Tax Receiver that he was dissatisfied with the assessments made and demanded an arbitration, as provided by the Statutes of the State, naming at the same time P. E. May as his arbitrator. Upon the receipt of such demand for arbitration the said C. A. Steed, Tax Receiver of Richmond County, named as arbitrator for the Taxing Authorities one Thomas S. Gray. These Arbitrators being unable to agree as to the value of said property which had been assessed, the Executor and the Tax Receiver wrote the Board of Commissioners of Roads and Revenues of Richmond County, Georgia, requesting the appointment of an Umpire, as provided for under Section 1116-D of the Code, whereupon the Board of Commissioners of Roads and Revenues of Richmond County did appoint C. D. Carr as Umpire in said Arbitration. Before the Arbitration was held the State of Georgia on the 2nd day of September, 1919, presented its petition for an injunction to the Honorable Henry C. Hammond, Judge of the Superior Court of the Augusta Circuit, to

enjoin the same upon the grounds set out therein. When this petition was presented to the Honorable Henry C. Hammond, the [fol. 246] said E. H. Callaway, Executor of said White, appeared and urged an oral demurrer thereto, whereupon the same was refused. To this refusal to grant a temporary restraining order the State of Georgia sued out a Bill of Exceptions to the Supreme Court, and upon a consideration thereof the Supreme Court affirmed the Lower Court August 14, 1920, holding that there had been a substantial compliance with the Statutes in bringing about said arbitration proceedings; that the oath which the Arbitrators had subscribed to was in substance what the law required; that while the selection of the third Arbitrator as Umpire might have been "inadvisable and injudicious," that the Judge of the Superior Court did not err in refusing to grant a temporary injunction against the holding of said Arbitration. In the meantime, after the Judge refused to grant said temporary restraining order at the time the said petition for injunction was presented on the 2nd day of September 1919, he also refused to grant a supersedeas. Whereupon, the said Board met on the afternoon of September 2, 1919, at which hearing all parties were represented and introduced evidence. After the hearing — the evidence and argument of Counsel the said Board rendered its award September 2, 1919. Upon the rendition of this award the State of Georgia filed its supplemental petition on the 6th day of September, 1919 in said original suit to set aside said award, in which it was alleged amongst other things that the award rendered by said Board was so insignificant in amount as to show upon the face thereof that the same was the result of bias and prejudice; that the only evidence of value that was introduced before said Board was the evidence of the State, to which petition there was attached a brief of the evidence which had been submitted to said Board; that the Arbitrators in arriving at said award arbitrarily disregarded the only evidence of value before them and deducted certain indebtedness which the said White owed the firm of Clews & Company, Bankers of New York City, and divided the result by four and returned this answer as their award. There were named as defendants in said [fol. 247] petition, E. H. Callaway, as Executor of J. B. White, C. B. Carr, P. E. May and Thomas S. Gray, the persons composing said Board of Arbitration, C. A. Steed, Tax Receiver of Richmond County, Georgia, and Chas Bohler, Tax Collector of Richmond County, Georgia.

C. S. Bohler, The Tax Collector, filed his response on the 17th day of September, 1919.

Subsequent to the filing of said supplementary petition to set aside said award the said E. H. Callaway, Executor as aforesaid, filed a demurrer thereto on the 8th day of December, 1919, wherein he raised the issue that said petition could not be maintained by the State, in that the Governor had no right to direct that the same be brought, etc., that only a brief of the evidence was attached thereto and that a copy of the award was not attached.

On the 21st day of February, 1920, Thos. S. Gray, one of the Arbitrators named as one of the defendants, filed his answer.

Also on the 21st day of February, 1929, Richmond County filed its intervention in said cause and was made a party plaintiff by an appropriate order.

On the same date, February 21, 1929, the plaintiffs further amended their petition in which they set up [illegible] rendered by said Board of Arbitrators, and wherein they further charged that the same was the result of prejudice and bias, and especially that of C. D. Carr, and alleged therein that the said Carr before entering upon said Arbitration had made the statement that the property of the estate of the said White should not be assessed for back taxes upon the property in question, because the said E. H. White had made a substantial bequest to the City Council of Augusta, which amendment was allowed and filed. Upon the filing of this amendment the said E. H. Calloway, Executor of the Estate of said White, filed an amended demurrer on the 2nd day [fol. 248] of April, 1929, wherein he renewed the grounds of his original demurrer, and set out other grounds. Subsequent to this date the said Calloway, Executor as aforesaid, towit: on the 2nd day of April, 1929, filed his answer in said cause and in addition thereto filed a cross petition in which he raised the question of the legality of the contracts which had been entered into by the County of Richmond and by the State through the Board of Commissioners of Richmond County and the Governor of the State of Georgia, and wherein he sought to make the Attorney representing the State and County parties, and prayed that said contracts under which they are acting in filing said petitions and under which they were representing the State and County of Richmond in said litigation be delivered up and cancelled. To this cross bill the State and Richmond County did on the 17th day of April, 1929 file their demurrer, the substance of which was: Because the said cross petition set forth no matter necessary to the defense of said Executor to the original petition nor germane thereto; that it appeared upon the face of the petition to which said Calloway was responding that the petitioners therein were seeking by the process of the Courts to compel said Executor, an alleged defaulting taxpayer, to make returns and pay taxes upon over a million dollars of personal property which had never been returned for taxation; that whatever fees might be paid petitioners' attorneys was not part, nor was it necessary to the defense of said Executor; that it did not lie within an alleged defaulting taxpayer who was resisting the payment of taxes claimed to be due, to collaterally attack the prerogative of the Governor of the State to contract with attorneys for the representation of its interests in the Courts where such rights were involved, which was also true with reference to the County authorities, because the petition being responded to was brought for the purpose of enjoining an alleged illegal arbitration, and it was not apparent from said petition that it was necessary for the Taxing Authorities to be represented by Counsel.

[fol. 249] Subject to such demurrer Counsel representing the State and Richmond County on the 17th day of April, 1929, filed their response to said cross bill, wherein they denied the allegations

thereof, and raised the issue that same was in no sense necessary to any defense which said defaulting Tax Payer was entitled to make etc.

Thereafter, on the 29th day of November, the State and Richmond County again amended their supplementary petition, wherein they set out in detail all the evidence which had been introduced before said Board of Arbitrators, and alleged that such was all of the evidence and was all of the information which said Board had before it when it rendered its award, and in which it further set out the manner in which said award was arrived at. In said amendment it was alleged that the undisputed evidence before said Board of Arbitrators showed that for the year 1911 the fair market value of the securities owned by said J. B. White was worth $939,866.67, whereas the said Board of Arbitrators returned an award for only $112,744.83; for the year 1912 that it was worth the sum of $1,337,171.54, whereas said Board returned an award $154,550.67; for the year 1913 that it was worth $1,250,985.83, whereas the Arbitrators returned an award for only $187,927.98; for the year 1914 it was worth $1,484,415.83, whereas the Arbitrators fixed the value at only $194,138.86; for the year 1915 it was worth $1,265,208.69, whereas the Arbitrators in their award fixed the value at only $180,202.74; for the year 1916 that it was worth $1,423,856.00, whereas the Arbitrators fixed the value for this year at only $301,183.67; and for the year 1917 that it was worth $1,492,650.19, whereas the Arbitrators fixed the value thereof at only $360,813.92; and that such award was so insignificant in amount as to indicate upon its face that the same was the result of bias or prejudice in favor of the Tax Payers, and was fraudulent in law against the interest of the Taxing Authorities, etc., which amendment was duly allowed and filed. [fol. 250] On the same day the Executor again filed an amended demurrer practically upon the same grounds as were the other demurrers which had been filed by him.

Thereupon, on said 29th day of November, 1920, said petition as amended came on to be heard before the Hon. Henry C. Hammond, Judge of the Superior Court of Richmond County, upon the demurrer as amended from time to time, and at the same time there was also heard the demurrer filed by plaintiffs to defendant's cross petition, and after hearing arguments pro and con the Court passed an order sustaining the demurrer filed by said E. H. Callaway, as Executor of the said J. B. White, and dismissed said petition as amended in the following language: "After hearing arguments, the foregoing demurrer and amended demurrer of the defendant, E. H. Callaway, Executor of J. B. White, are hereby sustained and the restraining order heretofore granted is dissolved and plaintiffs' petition as amended is hereby dismissed. Ordered further, that this order act as a supersedeas until said case is finally determined. This November 29, 1920." (Signed) "Henry C. Hammond, J. S. C. A. C."

He also at the same time passed an order overruling the demurrer filed by the State of Georgia and Richmond County to the cross petition filed by the said Callaway, Executor as aforesaid, wherein he sought to have the contracts of the Attorneys representing the State

of Georgia and Richmond County cancelled in the following language: "The foregoing demurrer is hereby overruled, after hearing argument thereon. This November 29, 1920." (Signed) "Henry C. Hammond, J. S. C. A. C." To which said judgments and rulings the plaintiffs then and there excepted, now except, and assign error upon the judgment of the Court in sustaining said demurrer of said Executor, and in dismissing said petition as amended upon the following grounds, to-wit:

1. Because the Court erred in sustaining said demurrer upon each and every ground thereof, and in dismissing thereunder the petition as amended and in refusing the relief prayed for therein.

[fol. 251] 2. Because the effect of the Court's decision in sustaining said demurrer was to err in holding that the petition as amended could not be maintained by the State of Georgia and County of Richmond.

3. Because the effect of the Court's decision in sustaining said demurrer was to err in holding that the Board of Arbitration called into existence under the laws of Georgia by the Executor of a defaulting Tax Payer for the years 1911, to 1917 to review an assessment on property which had never been returned for taxation during said years was supreme, and the powers of said Board were unlimited, and that its jurisdiction was not confined simply to finding the true or fair market value of the property which had been assessed by the Tax Receiver, but on the contrary, that said Board of Arbitration so organized had jurisdiction of and was clothed with equitable powers and could, irrespective of value, fix the amount that a Tax Payer should, under all conditions, pay on his property, and had power to reduce the taxable value of such property if in its opinion he was illegally discriminated against, and in this instance could properly take into consideration the question of illegal and unconstitutional discrimination claimed by the Executor of White under the evidence produced by him, and could decide whether such discrimination existed as was claimed by the Executor, and if they found it existed for the years in question, 1911 to 1917, could fix any value for taxation of said property in each year that said Board saw fit, regardless of the evidence of the true value of the property, and could return as an award for each year, say one-tenth of the real value of said property, as the amount upon which taxes for each year in question should be paid, and that such award could not be set aside in this case. Plaintiffs in error aver that such ruling was error and authorized said Board to grant an exemption from taxation to said J. B. White.

4. Because the Court erred in sustaining said demurrer to the petition, when by the allegations thereof, taken as true, it showed that said Board of Arbitration had disregarded the only evidence of value submitted to it, and had arbitrarily returned an award of less than [fol. 252] one-tenth of said value, so insignificant in amount as to show that the award was the result of bias and prejudice, and was in law fraudulent as against the rights of petitioners, and that the

arbitrators had reached their conclusion by assuming an unlawful jurisdiction and had used an illegal method in arriving at the amount of the award which was returned, in that they had illegally deducted sundry indebtedness of White to Henry Clews & Company, Bankers of New York City, and then divided the result, which they considered White's equity in the property, by four, and returned the last result, or one-tenth of the real value of the property, as the value of the property for taxation, and plaintiffs in error specify that the Court erred in sustaining said demurrer and in effect in holding that the Board had any such jurisdiction and could by said method reach said award as stated, and thereby grant an exemption from taxation to J. B. White, and having done so, said award was legal and could not be set aside.

5. Because under the laws of this State it was the right of the Executor of White, Tax Payer, whose property had been assessed for taxes by a Tax Receiver, to either file a bill in equity denying the liability of the property for taxation, or raise an issue in a Court of Equity that he was being unconstitutionally discriminated against, or to submit to a Board of Arbitration the question of the value of the property which had been assessed. Said Executor elected to follow the latter course, and it was error in the Court to sustain said demurrer and deny the relief prayed for by the State and County, and to hold by so doing that the Tax Payer Callaway, Executor, having elected to submit the question of valuation to a Board of Arbitration, said Board could not only determine the question of valuation, but could act as a Court of Equity at the instance of the Tax Payer, and such Tax Payer could before such Board raise the question of illegal and unconstitutional discrimination, and said Board could hear such evidence and decide such issue, and that it had properly heard the evidence submitted by the Tax Payer and properly [fol. 253] rendered the award thereon, as contended for by him, and that the State was bound thereby, and said award could not be set aside.

6. Because, even if the Court, by sustaining said demurrer, was correct in holding that the Board of Arbitration in said case was clothed with equitable powers and could determine the question of unjust, illegal and unconstitutional discrimination as raised by Callaway, Executor, Tax Payer, before said Board, still plaintiffs in error claim that there was no sufficient evidence submitted to said Board by Callaway, Executor—all of which was set out in the petition—to show or establish a real administration of the taxing laws of the State by the Taxing Officials, or to show that they had knowingly willfully and intentionally administered the tax law so as to place upon one person or class a burden, from which another person or class similarly situated was relieved, or to show any illegal or unjust discrimination against the estate of J. B. White, as contended by said Executor, and that the Court erred in so holding. Plaintiff in error contends that there was no proof that such discrimination existed or that the taxing officials of the state were accustomed,

in the administration of the taxing laws, to tax property at less than its fair market value, when they knew what was the market value of the property to be taxed, and in this particular case the evidence showed the contrary, for the Tax Receiver of Richmond County, Steed, testified before the Board of Arbitration that if a taxpayer should return his property to him and put a value thereon of a million dollars, he would tax the same at a million dollars. If the general scope of the evidence introduced by the taxpayer Callaway, Executor, tended to show that possibly there might be a large amount of stocks and bonds in the State that were returned at much less than their true value from 1911 to 1917, and in some instances not returned at all, of which condition it is contended that there was no sufficient evidence, still it is contended there was no evidence to show that the Taxing Officials in general throughout the State, and those of Richmond, Bibb, Fulton and Chatham Counties in particular, had anything to do with the bringing about of the condition claimed to exist by Callaway, Executor, whereby such [fol. 254] property was either concealed or not returned, or if known to exist, taxes were not paid thereon at its true value, but the evidence was rather to the contrary. It is contended there was no evidence that the Taxing Officials of the State knew of said taxable property existing, or that they had neglected their duty relative to taxing the same, or had allowed existing property as a whole to escape taxation, so as to allow an exemption from taxation to arise. Plaintiffs in error insist that even if one person might return certain property at one value, and the Tax Receiver of a given County accept such Tax Payer's return as the true value thereof, and another Tax Payer returns similar property at a different value, and the Tax Receiver accept it, this would not constitute illegal or unjust discrimination under the law, and the Court by sustaining said demurrer erred in so holding, for under the law of Georgia every taxpayer is practically the judge of the market value of his own property and is required to return the same under oath, and such oath is presumed to be true, and unless the Tax Receiver questions the same the property returned is taxed according to such return, and if different taxpayers put different values upon similar property, and some taxpayers violate their duty to the State by failing to return their property at all, or in returning it at an insufficient value, the whole together would not constitute as against the State in this case unjust, illegal and inequitable taxation to such an extent as to bring about an unlawful and unconstitutional discrimination as between taxpayers of the same class on similar property, so as to relieve the estate of White from its just and lawful taxes for the years aforesaid. And plaintiffs in error contend that the evidence offered by the Executor before said Board to establish said illegal and unconstitutional discrimination against White in particular was wholly insufficient. It is contended that at best it was a mere suggestion of some omissions in some three or four Counties, and not a known condition throughout the State brought about by the Taxing Officials in willfully disregarding the [fol. 255] State law and failing to tax known property subject to

taxation. And it was error in the Court to sustain said demurrer and in effect to hol- that the evidence from said Executor before the Arbitrators, appearing in the petition as amended, established an unequal, unjust, illegal and unconstitutional discrimination in the administration of the tax laws of the State—with an "evil eye" and "unjust hand" as against the estate of J. B. White that justified and required said Board of Arbitrators to reduce his taxes or grant him an exemption from taxation upon admitted values down to one-tenth of the actual value of his said property.

The judgment of the Court in overruling the demurrer of plaintiff to the cross petition of said Executor, wherein he sought to have cancelled the contracts of Counsel representing the State of Georgia and Richmond County was erroneous upon the following grounds:

1. Because the allegations of said cross petition alleged no facts that were essential to any defense which the said defaulting Tax Payer was entitled to make, because whatever compensation the Counsel for plaintiffs might be paid could in no sense be an excuse for a defaulting Tax Payer's failure to pay taxes upon his property according to its market value.

2. Because said rulings challenge the very sovereignty of the State in that it sets at naught the power of the Governor to contract with Attorneys to litigate in the Courts of Georgia, touching a right which is the very life of the State, to-wit: its right to enforce the collection of its revenues, and the same is true with reference to the rights of the Board of Commissioners of Roads and Revenues, touching the right of the County to do likewise.

3. Because the Governor is the executive head of the State and his power to contract for the preservation of the State's rights cannot be collaterally challenged in any such manner.

4. Because under the Constitution of the State of Georgia, Richmond County is a body corporate with power to sue and be sued, and [fol. 256] the Board of Commissioners thereof are the sole judges of what litigation is necessary for its interest, and its right to have the benefit of counsel in enforcing these rights cannot be challenged in the manner as sought to be done in said petition and the Court erred in holding it could be done by said ruling.

5. Because it is self evident that if the right is denied either the State or the County to employ counsel to prosecute or defend suits in the Courts of the State, then indeed are they denied their day in Court, which is inconceivable, yet the ruling of the Court complained of has just such effect and was error. Indeed, the Courts are creatures of the State and cannot deny their sovereign the right to be heard therein as was done by said ruling.

Plaintiff specified the following portions of the record in said case as material to a clear understanding of the errors in this Bill of Exceptions, to-wit:

1. The original petition of the State of Georgia filed in office on the 6th day of September, 1919, and Exhibits thereto.

2. The response of Chas. S. Bohler, Tax Collector, filed in office on the 17th day of October, 1919.

3. The demurrer of E. H. Callaway, as Executor of J. B. White, filed in office on the 8th day of December, 1919.

4. The Response of Thos. S. Gray, one of the Arbitrators filed in office on the 21st day of February, 1920.

5. The Intervention of Richmond County and Order allowing the same filed in office on the 21st day of February, 1920.

6. The Amendment of the State of Georgia and Richmond County filed in office February 21st, 1920, together with the order allowing the same.

7. The Amended Demurrer of E. H. Callaway, Executor as aforesaid, filed on the 2nd day of April, 1920.

8. The Answer and Cross Bill of the said E. H. Callaway, Executor as aforesaid, filed on the 2nd day of April, 1920.

9. The Response of the State of Georgia and Richmond County, [fol. 257] and Wallace B. Pierce, Benjamin E. Pierce and A. L. Franklin, Attorneys for Plaintiffs in Error, to said Cross Petition filed on the 17th day of April, 1920, and their Demurrer filed on said date.

10. The Amendment of the State of Georgia and Richmond County, and the Order allowing the same, filed on the 29th day of November, 1920.

11. The Amended Demurrer of said E. H. Callaway, Executor as aforesaid, filed on the 29th day of November, 1920.

12. The Judgment of the Court sustaining the Demurrer of E. H. Callaway, Executor as aforesaid, dated November 29, 1920.

13. The Judgment of the Court overruling the Demurrer of the State of Georgia and Richmond County to the Cross petition, filed by said E. H. Callaway, Executor as aforesaid, on the 29th day of November, 1920.

14. The entries of filing of each and all of the parts of the record above specified to be entered and transmitted in their proper order.

And now within the time provided by law, and within thirty days of the entry of the judgment sustaining the said demurrer of said E. H. Callaway, Executor as aforesaid, and the Judgment overruling the demurrer of the State of Georgia and Richmond County to the cross petition of said E. H. Callaway, Executor as aforesaid, comes the State of Georgia and Richmond County, plaintiffs in error, and tender this their Bill of Exceptions and pray that the

same may be certified as provided by law, in order that the errors complained of may be considered and corrected by the Supreme Court of Georgia.

R. A. Denny, Attorney General, Atlanta, Ga. Post Office Address: Atlanta, Ga. Pierce Bros., A. L. Franklin, Am. K. Miller, Attorneys for Plaintiffs in Error. Post Office Address: Augusta, Ga.

[fol. 258] I do certify that the foregoing Bill of Exceptions in the case of the State of Georgia and Richmond County, Plaintiffs in Error vs. E. H. Callaway, Executor of J. B. White, et al. is true, and specifies all the record material to a clear understanding of the errors complained of, and the Clerk of the Superior Court of Richmond County is hereby ordered to make out a complete copy of such parts of the record in said case as are in this Bill of Exceptions specified, and certify the same as such, and cause the same to be transmitted to the March Term 1921 of the Supreme Court that the errors alleged to have been committed may be considered and corrected.

This 18th day of December 1920.

(Signed) Henry C. Hammond, J. S. C. A. C.

[fol. 259] **Exhibit J to Amendment to Complaint**—Continued

Supreme Court of Georgia

No. 2380

[Title omitted]

OPINION

By the COURT:

On July 28, 1919, the tax-receiver of Richmond County made assessments for taxation of certain corporate stocks and bonds belonging to the estate of J. B. White, late of Richmond County, this State, who died testate in 1917. The assessments were for the years 1911 to 1917, both inclusive. White had not returned these securities assessed by the receiver for any of those years, nor had Callaway, as executor of his will returned the same. The executor, being dissatisfied with the assessments made by the receiver, as they were in his opinion excessive, demanded that the matter of such assessments be submitted to arbitration in accordance with the act of 1910 (Georgia Laws 1910, p. 22) codified in the Political Code, § 1116 (d). Thereupon the executor chose an arbitrator, the tax-receiver chose another, and these two being unable to agree upon the assessments and upon an umpire, the county commissioners of Richmond County appointed an umpire. On September 2, 1919, the State, for itself and in behalf of Richmond County, presented to the judge of the superior court of that county a petition to enjoin

the arbitration proceeding, on the ground of alleged disqualification of two of the arbitrators, and because they had not taken oaths [fol. 260] applicable to arbitrations under the act of 1910, above referred to. The judge refused, on the last-mentioned date, to grant an interlocutory injunction, and denied a supersedeas. The petitioners excepted to such rulings, and upon a review of them by writ of error this court affirmed the rulings made by the trial judge. State v. Callaway, 150 Ga. 235. Afterwards and on the same day the interlocutory injunction *injunction* and supersedeas were denied, the arbitrators had a meeting, at which all parties at interest, including the State and the county, were present by counsel, introduced evidence, and submitted arguments. At this meeting no objections were urged to the arbitration proceedings. An award was made immediately after the hearing. Four days thereafter, September 6, the State for, itself and in behalf of the county, filed the petition now under review, which is supplementary to the original petition noted above, to set aside the award, the ground of the petition being in substance that no evidence was introduced before the arbitrators as to the true value of the property assessed, except that submitted by the State and county, which showed the value of the property to be something like ten times as much as the valuation placed upon it for taxation in the award, and that the arbitrators had not confined themselves, in making the award, to the true value of the property, but considered evidence tending to show that a very large percentage of the owners of similar property residing in Richmond county, and other counties in the State, and particularly [fol. 261] in the Counties of Bibb, Chatham, and Fulton, had returned a very small percentage of it for taxation, and where returns had been made, the assessments on it were insignificant.

At the appearance term the executor demurred to this petition, on various grounds which, in the view we take of the case, are not necessary to be set forth. At the same time the executor filed a cross-petition to have declared illegal and void a certain contract, which was set out, made by the County of Richmond with Pierce Brothers, to pay them certain commissions on taxes which they might collect on unreturned property; alleging that these attorneys had represented the county from the inception of the proceedings to have assessments for taxation of the securities owned by White for the years 1911 to 1917, both inclusive, and were directly interested in the result of the proceedings. The cross-petition also sought to have declared void a contract made by the State with Pierce Brothers and A. L. Franklin, of a similar character as that made by the County of Richmond with Pierce Brothers; it being alleged, in substance, that both of such contracts were contrary to public policy and the law of the State, and therefore illegal. On a hearing the demurrer of the executor to the supplemental petition was sustained, and the petition was dismissed. The demurrer to the cross-petition was overruled. Petitioners in the supplemental petition, by writ of error, excepted to both of such rulings.

[fol. 262] Fish, C. J., and Hines, J. The act of 1918 (Georgia Laws, 1918 p. 232), approved July 31, 1918, is in part as follows: "That when the owner of property has omitted to return the same for taxation at the time and for the years the return should have been made or, having returned his property or part of the same, has grossly undervalued the property returned, or his property has been assessed for taxation at a figure grossly below its true value, such owner, or, if dead, his personal representative or representatives, is required to return such property for taxation for each year he is delinquent, whether delinquency results from failure to return or from gross undervaluation either by the delinquent or by assessors, said return to be made under the same laws, rules, and regulations as existed during the year of said default, or said property was returned or assessed for taxation at figures grossly below its true value." Section 3 is as follows: "Be it further enacted, that when such property is of that class which should be returned to the tax-receiver of the county, the said tax-receiver shall notify in writing such delinquent, or, if dead, his personal representative or representatives, of such delinquency, requiring that a return shall be made thereof within twenty days." Section five provides: "That if the delinquent or his personal representative or representatives, as provided under section 3 of this act, refuses or fails to return such property after notice given him, it shall be the duty of the tax-receiver to assess [fol. 263] such property for taxation from the best information he can obtain as to its value for the years in default, and notify such delinquent of the valuation, which shall be final, unless the person or persons so notified raise the question that it is excessive; in which event the further procedure shall be by petition in equity in the superior court of the county where such property is assessed." Section 8 is: "That all laws and parts of laws in conflict with this Act be and the same are hereby repealed."

1. The assessments of the property for taxation, involved in this case, having been made in July, 1919, and the arbitration proceedings as to such assessments having been had in September of that year, the above-quoted provisions of the act of 1918 provided the remedy, that is, by petition in equity, by the dissatisfied delinquent taxpayer, for having such assessments corrected because excessive. The procedure for arbitration of tax assessments claimed by delinquents to be excessive, in force prior to the enactment of the act of 1918, are by it repealed. It follows, therefore, that the arbitration proceedings for the assessments of property for taxation here involved, and the award made by the arbitrators, were wholly void; and the petition now under review for the purpose of setting aside the void award was unnecessary, and the judge of the superior court did not err in sustaining the demurrer to the petition and dismissing the same.

[fol. 264] It follows that we concur in the judgment affirming the judgment of the lower court, sustaining the demurrer of the defendants to the supplementary petition in this case. We do so because the complainants have an adequate, full, and complete remedy at law. The arbitration proceedings were null and void un-

der the Act of August 17, 1918 (Georgia Laws 1918, p. 234 et seq.). Under this act there is now no provision of law for arbitrating an assessment made by a receiver of property of a delinquent taxpayer, claimed by the latter to be excessive. In the case of such delinquent taxpayer any objection to the assessments by the receiver, on the ground that they are excessive, must be raised by petition in equity, addressed to the superior court of the county where such property is assessed, under section 5 of this act. This being so, the complainants have a full and complete remedy at law. This void award did not stand in the way. The tax-collector can issue his executions based upon the assessments made by the receiver, and proceed to collect the taxes thereunder. If the executor of the delinquent taxpayer is dissatisfied with these assessments, on the ground that they are excessive, he has his remedy under this act. We concur in the judgment of affirmance solely on the ground that the award was void, and equity will not undertake to set aside a void proceeding which does not stand in the way of the enforcement of the payment of taxes, based upon these assessments by executions, levies, and sales.

2. The cross-petition sought to introduce new and distinct mat-[fol. 265] ters, not involved in the original action, and the court erred in not dismissing it on demurrer. Peterson v. Lott, 137 Ga. 179; Atlanta Northern R. Co. v. Harris, 147 Ga. 212, 218.

Judgment affirmed in part and reversed in part. All the Justices concur, except Hill and Gilbert JJ., absent.

In Supreme Court of Georgia

Concurring Opinion

Beck, P. J.: I concur in the judgment of affirmance in this case; though I doubt whether the provisions in the act of 1918, declaring when the alleged delinquent taxpayer may resort to equity, is applicable under the facts of the record. The petition in the present case is supplementary to the former original petition in which the petitioners sought to show that the proceedings before the arbitrators were illegal for certain specified reasons. Among the reasons specified, there was no claim that under the act of 1918 the arbitrators in this case could not entertain an appeal from the assessment made by the tax-receiver. But construing that original petition as a whole, it recognized the right of the taxpayer to have arbitration. Furthermore, the complainants participated in the arbitration, and cannot now raise objections to the jurisdiction of the arbitrators, based upon the act of 1918, after having in their original petition recognized that the arbitrators would have had the jurisdiction but for the reasons there pointed out. I also concur in the judgment of affirmance on the ground that equity will not afford the relief here sought,

[fol. 266] as the petitioners have a statutory remedy as pointed out above, even if the act of 1918 is applicable to this case.

[fol. 267] IN SUPREME COURT OF GEORGIA

CONCURRING OPINION

ATKINSON, J., concurring: Construing the petition most strongly against the pleader, the sole ground of attack upon the award was that the valuation placed upon the property was so grossly inadequate as to show fraud upon the part of the arbitrators. The assignments of error in the bill of exceptions are limited to that question. Under the act by virtue of which the arbitration was had, Political Code, §1116(d), the arbitrators had jurisdiction, and their power was limited to the question of valuation of the property, and their decision was final. Valuation of property was necessarily a matter of opinion. It would require actual fraud or corruption on the part of the arbitrators to set aside the award. In this view the allegations of the petition were insufficient to show fraud, and the court properly dismissed the petition on demurrer. In view of the record in the trial court and the assignments of error in the bill of exceptions, it is unnecessary to make a ruling as to the applicability or effect of the act of 1918.

[fol. 268] CLERK'S OFFICE SUPREME COURT OF GEORGIA

Atlanta, March 16, 1922.

I hereby certify that the foregoing pages hereto attached contain a true and complete copy of the opinion of the Supreme Court of Georgia in the case therein stated, as appears from the original of file in this office.

Witness my signature and the seal of said court hereto affixed the day and year above written.

W. E. Talley, Deputy Clerk. (Seal of the Supreme Court of the State of Georgia.)

[fol. 269] SUPREME COURT OF GEORGIA

Atlanta, March 4, 1922.

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

REMITTITUR

This case came before this court upon a writ of error from the Superior Court of Richmond County; and after argument had, it is

considered and adjudged that the judgment of the Court below be affirmed in so far as it sustained the demurrer to the petition and reversed in so far as it overruled the demurrer to the cross petition filed by the defendant E. H. Callaway. Costs involved by bringing the case to this court taxed against the defendant. All the Justices concur in the judgment except Hill and Gilbert, JJ., absent.

Bill of Costs, $10.00.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta, Mar. 16, 1922.

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia, and that Pierce Bros. paid the above bill of costs.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

W. E. Talley, Deputy Clerk.

Filed in office this 17 day of March, 1922.

Geo. B. Pournelle, Deputy Clerk

IN SUPREME COURT OF RICHMOND COUNTY

[Title omitted]

JUDGMENT ON REMITTITUR

The remittitur of the Supreme Court in the above stated cause having been sent down and is now on file in the office of the Clerk [fol. 270] of the Superior Court, it is hereby ordered that the judgment of the Supreme Court be, and it is hereby made the judgment of this court.

This 21 day of March, 1922.

Henry C. Hammond, J. S. C. A. C.

STATE OF GEORGIA,
Richmond County:

CLERK'S OFFICE, SUPERIOR COURT

I hereby certify that the foregoing Remittitur and order in the case therein stated is a true and correct copy of the original on file in this office.

Witness my signature and the seal of said Court.

This 18th day of September, 1922.

Geo. B. Pournelle, Deputy Clerk Superior Court, Richmond County, Ga. (Superior Court Seal.)

[File endorsement omitted.]

[fol. 271] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO ORIGINAL BILL.—Filed Sept. 28, 1922

Now comes E. H. Calloway, Executor of J. R. White, Complainant in the above stated cause, and amends his original Bill therein by adding the following at the end of paragraph 25:

25a. That in the original equitable petition filed by the State of Georgia on the 6th of September 1919, attacking the award of said Arbitrators and seeking to set the same aside, a copy of which is attached as one of the Exhibits to the Amendment filed to the original petition in this cause and allowed on September 23rd, 1922, the 11th paragraph thereof is as follows:

"That Chas. S. Bobbe is the Tax Collector of Richmond County, and a resident thereof, whose duty it is to collect all taxes payable in said County and appearing upon the Digest thereof, and unless restrained by this Court, Petitioner fears that he will proceed to collect and accept payment of the taxes calculated upon the assessment as made by said Board of Arbitrators, hereinabove complained of."

That among the prayers of said petition were the following:

"That said Chas. S. Bobbe, as Tax Collector, be restrained from collecting any taxes upon the assessments as made by said Arbitrators."

That upon the presentation of said petition to the Honorable Henry C. Hammond, Judge of the Superior Court of Richmond County on September 6th, 1919, he signed the following order:

[fol. 272] "The foregoing petition read and considered. Ordered that the same be filed and served as required by law. Ordered further, that the Defendants, C. A. Wood, as Tax Receiver, and C. S. Bobbe, Tax Collector, show cause before me at the Court House in Richmond County on the 13th day of September, as to why they should not be enjoined, as therein prayed, until the final hearing, and in the meantime, until the hearing as hereabove, let said cause remain in status quo. This September 6th, 1919."

25b. That said Restraining Order continued of force until the hearing on the demurrers filed to said petition on November 20th, 1920, and during the pendency of said restraining order the said Chas. S. Bobbe, Tax Collector of said County, was restrained and enjoined from accepting from your Orator the said taxes which had been tendered to him on the 5th of September 1919, and your Orator was in like manner, by said Injunction, prevented and restrained from paying the same.

25c. That the demurrers to said equitable petition were heard by the Judge of the Superior Court of Richmond County on November

9th, 1929, and on that date the following order was passed by said Court:

"After hearing argument, the foregoing demurrer, and the amended demurrer of the Defendant, E. M. Calhoun, Executor of J. B. White, are hereby sustained, and the restraining order heretofore granted is dissolved, and plaintiff's petition, as amended, is hereby dismissed."

"Ordered further, that this Order act as a supersedeas until said case is finally determined."

"This November 29th, 1929."

That while said Order sustaining said demurrer dissolved said restraining order, it, at the same time, granted a supersedeas which, in effect, kept the restraining order in force until said cause was finally determined in the Supreme Court of Appeals.

That a Bill of Exceptions was said out to said Order immediately by counsel representing the State and County in said cause, and the case carried to the Supreme Court of Appeals, where a decision therein was rendered on the 8th day of March 1930, in which the decision of the Superior Court of Richmond County, sustaining said [fol. 278] demurrer and dismissing said equitable petition was affirmed.

278. That immediately upon [illegible] of the affirmance of the decision of the Superior Court of Richmond County, your Petitioner again called upon Chas. S. Bellin, Treasurer of said County, with the aforesaid check for $27,000.00, on the Planters Loan & Savings Bank of Augusta, Georgia, which had been tendered to the said Bellin. Upon collection on the 5th of September, 1930, and requested the said Bellin to accept the same and the said Bellin replied that while he would like to accept it, of course under the circumstances he could not do so, and within a few days thereafter, your Orator was notified by said Bellin, Tax Collector of said County, that he had asked the opinion upon which he is supposed in this Bill, and your Orator thereupon employed, and had filed, his Bill in this cause, in which he asked the taxation which had been made, and made a continuous tender of the taxes adjudicated in the manner aforesaid, and as found upon the assessments as found by the award of said Arbitrators.

[illegible] That pending the present hearing in said cause, your Orator, having learned from counsel representing the defendants herein that a number of said taxes as found upon the assessments as fixed in the award of said Arbitrators, if tendered to the amount which Complainant admitted was due, would be accepted by said Chas. S. Bellin. Upon collection on the 25th day of September, 1930, called upon said Bellin and delivered to him a check on the Planters Loan & Savings Bank of Augusta, Georgia, for the said sum of $27,000.00, as the full amount of taxes, including interest collected to September 5th, 1930, as due by the estate of said J. B. White for taxes to the State, County and Board of Education of Richmond

County for the years from 1911 to 1917, inclusive, as calculated and based upon the assessments as fixed by the award of said Arbitrators [fol. 274] on September 2nd, 1922, and said check for said amount was accepted by the said Chas. S. Bohler, Tax Collector as aforesaid, and a receipt setting forth the transaction in full was executed and delivered by the said Tax Collector to your Orator,—a copy of which is hereunto attached marked Exhibit "K."

That under the facts herein set forth, and under the tenders as therein made, your Orator alleges that the estate of his said testator is not liable for any additional interest upon said taxes.

25f. That having paid all of the taxes due to the State, County and Board of Education of said Richmond County by said estate of J. B. White for said years from 1911 to 1917 in accordance with the assessments as made by said Board of Arbitrators, including interest to said 5th day of September, 1919, the date of the original tender, and in view of the original tenders thereof, made as hereinbefore stated, your Orator pleads the same as full settlement and satisfaction of all the claims for back taxes by the State, County and Board of Education of said Richmond County, Georgia, against the estate of said J. B. White, and prays that said estate be fully relieved, by judgment of this Honorable Court, from any further liability on account of said taxes for said years, but at the same time offers to do full and complete equity and pay such an amount, if any, as this Honorable Court shall ultimately determine said estate is liable for.

Callaway & Howard, Attys. for Complainant.

Above and foregoing amendment is hereby allowed. This Sept. 26, 1922.

Wm. H. Barrett, United States Judge.

[fol. 275] Affidavit of E. H. Callaway to above paper omitted in printing.

[fol. 276] EXHIBIT K TO AMENDMENT TO COMPLAINT

Statement and calculation of back taxes as due to the State, County and Board of Education of Richmond County, Georgia, by the estate of J. B. White, for the years 1911 to 1917, inclusive, as based upon the assessments as determined by the award of the arbitrators in said proceeding, rendered September 2nd, 1919, showing and including the interest calculated thereon up to September 5th, 1919.

Year	Rate	Assessment	Taxes	Int. to Sept. 5, 1919
1911.....	1.35	$112,744.83	$1,522.45	$821.20
1912.....	1.35	154,550.67	2,086.43	980.74
1913.....	1.46	187,927.98	2,743.75	1,096.30
1914.....	1.39	194,138.96	2,698.53	889.37
1915.....	1.46	190,202.74	2,776.96	720.85
1916.....	1.48	301,183.67	4,457.51	845.05
1917.....	1.57	360,813.92	5,664.77	677.37
		1,501,562.77	21,950.00	6,030.88
			6,030.88	
			$27,980.88	

Received from E. H. Callaway, Executor of the Estate of J. B. White, Twenty-seven Thousand, Nine Hundred Eighty and 88/100 ($27,980.88) Dollars, in payment of the back taxes due to the State, County and Board of Education of Richmond County, Georgia, by the Estate of J. B. White, for the years from 1911 to 1917, inclusive, including interest calculated thereon up to September 5th, 1919, said calculation of taxes and interest being based upon the award of the Arbitrators in said tax proceeding, as rendered by the Board of Arbitrators therein on September 2nd, 1919, in accordance with the statement thereof as set forth above.

This receipt is given for the express purpose of acknowledging the receipt and payment of said taxes by said Executor, without prejudice to the rights of any of the parties in the pending litigation in reference thereto.

Chas. S. Bohler, Tax Collector. Augusta, Ga., Sept. 25th, 1922.

[File endorsement omitted.]

[Endorsed:] In the District Court of the United States for the Southern District of Georgia, Northeastern Division. E. H. Callaway as Executor of J. B. White, Complainant, vs. Chas. S. Bohler, Tax Collector of Richmond County, et al., Defendants. Filed in Office Sept. 26, 1922. C. J. Skinner, Jr., Deputy Clerk.

[fol. 277] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS AMENDMENT, ETC.—Filed Sept. 23, 1922

And now comes the defendants and moves to dismiss plaintiff's amendment filed September 21, 1922, setting up a claim or plea of res adjudicata, or judgment of the State Court of the issues involved in this case, upon the following grounds:

1. Because the judgment pleaded is void as against the legal rights of the State to enforce the tax fi. fas. sought to be enjoined in this case, because neither the State of Georgia nor the County of Richmond are, or can be concluded by any reference to an arbitration made by Tax Receiver Steed in July, 1919, when there was no law of force in the State at that time, which authorized the Tax Receiver to make a submission to arbitration of an issue as to taxes, such law having been repealed by the Act of July, 1918, of the Legislature of Georgia, of which act this court will take judicial notice.

2. Because a judgment under a State law, dismissing a bill attacking said award for want of equity, does not conclude the legal rights of the parties. Dismissal for want of Equity leaves the legal rights of parties of force and in effect the same — if the litigation had not *been* taken place.

3. Because the plea of res adjudicata does not set forth any such facts as would entitle the plaintiff to the relief sought in his bill.

4. Because there is contained in the said record attached to the [fol. 278] said plea, various and sundry evidence, which is illegal, irrelevant, and inadmissible against the defendants in the present suit, such as the testimony of C. A. Steed, the Tax Receiver, as to under what circumstances he made the assessment; he cannot now be heard to impeach the same, directly or indirectly.

5. Because the record attached to said plea relates to and contains different subject matter than that involved in the present case.

Wherefore defendant prays judgment hereon and that said plea be stricken as setting out no defense against the tax executions which the plaintiff seeks to enjoin in his original bill.

A. L. Franklin, Pierce Bros., Wm. K. Miller, Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS

The foregoing motion to dismiss in the nature of a demurrer, having been taken under consideration along with the main case, and upon consideration thereof, the same is hereby overruled.

This 25th June, 1923.

WM. H. Barrett, U. S. Judge.

[File endorsement omitted.]

[fol. 279] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE TO AMENDMENT—Filed Sept. 26, 1922

Now comes the respondents in the above stated cause and answering the amendment tendered on the — day of September, 1922, say:

1. Respondents deny that portion which is proposed to be added to paragraph 38, which alleges that the decision referred to therein is res adjudicata touching questions involved in this litigation.

2. Respondents deny that portion which is proposed to be annexed to paragraph 40, which alleges that the decision of the Supreme Court of Georgia is res adjudicata and conclusively established the legality and binding force of the award in question.

3. Respondents deny that portion which is proposed to be attached as paragraph 53-a, in which it is alleged that the tax arbitration act of 1910 was for the express purpose of providing a method of assessing taxes so far as the present case is concerned; denies that the Act of 1918 is violative of the Constitution of the United States for any of the alleged purposes set out in said paragraph.

4. Respondents deny paragraph 53-b which alleges that the Act of 1918 is unconstitutional for any of the purposes set out and [fol. 280] that the arbitration proceedings are legal and binding upon respondents herein and is final and conclusive against the taxing authorities as set out therein.

Pierce Bros., A. L. Franklin, Wm. K. Miller, Attorneys for Respondents.

Affidavit of C. A. Steed to above paper omitted in printing.

Amendment allowed this Sept. 21, 1922.

Wm. H. Barrett, United States Judge.

[File endorsement omitted.]

[fol. 281] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED RESPONSE—Filed Oct. 12, 1922

Now come the respondents in the above stated cause and answering the amendment presented by Plaintiff on the 25th day of September, 1922, say:

1. Respondents deny the first paragraph of said amendment proposed to be added to paragraph 38 of the original petition, and in which the decision referred to therein is plead as res adjudicata, and say that the same is not true in fact for the reason that said case plead was dismissed upon general demurrer and the merits thereof were never gone into, and therefore the same cannot be res adjudicata, and also because what the court decided is uncertain and vague.

2. Respondents deny the second paragraph of said amendment, which it is proposed to become a part of paragraph 40 of the original bill, wherein plaintiff pleads the decision of the Superior Court of Richmond County sustaining a demurrer to a petition brought to set aside the award referred to, and denies that such is res adjudicata, and that the same conclusively established the legality and binding force of the award referred to; and deny that the same legally and finally established the only amounts upon which assess-[fol. 282] ments for the taxes in question, as claimed to be due by the Estate of J. B. White, for the years 1911 to 1917, could be assessed, and say that said award was a mere nullity for the reasons set out in respondents' original answer.

3. Responding to the third paragraph of said amendment, which is designated as paragraph 53-a of the original petition, respondents deny as alleged in said paragraph that if the Act of 1918, by implication, repealed the Tax Arbitration Act of 1910, that the same is unconstitutional for any of the reasons set out in said paragraph.

Benj. E. Pierce, Wallace B. Pierce, A. L. Franklin, Wm. H. Miller, Attorneys for Respondents.

[File endorsement omitted.]

[fol. 283] IN UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE TO AMENDMENT—Filed Oct. 12, 1922

Now come the respondents in the above stated cause, and in response to the amendment of Plaintiff in which he seeks to allege a tender of the amount of taxes admitted to be due, say:

1. Respondents admit paragraph 25-a of said amendment.

2. Respondents admit paragraph 25-b thereof.

3. Respondents admit paragraph 25-c thereof, all of which said paragraphs have reference to certain allegations and orders passed in the equitable petition plead in this case as res adjudicata, but which respondents say, in no way has to do with the merits of this cause.

4. Respondents deny paragraph 25-d, wherein plaintiff alleges that the tender made by him, set out therein, was such a tender as the said Tax Collector could accept for the reason that the said plaintiff insisted that the amount tendered was that as fixed by the Board of Arbitration held on the 5th day of September, 1919, and was intended to be in full of all taxes against said Estate and was tendered upon condition that he be given a receipt in full therefor.

5. Respondents admit paragraph 25-e as to the payment to said Chas. S. Bohler, Tax Collector, as set out therein, of $27,980.88, but say that the said plaintiff failed to pay even that which he admitted to be due, to wit, interest from the 5th day of September, 1919, as [fol. 284] it appears from complainant's own amendment offered herein that any restraining order which might have been passed by the Judge of the superior court touching the suit brought to set aside said award, was dissolved when the supreme court of Georgia on the 4th day of March, 1922 rendered its opinion in said cause, and respondents say that no unconditional tender was ever made to the Tax Collector of Richmond County for any interest from the said 5th day of September, 1919, or even from the 4th day of March, 1922, to date, even if plaintiff's theory is correct, but respondents say that the said plaintiff never made an unconditional tender of any amount of taxes prior to the payment of said $27,980.88 on September 25, 1922, that had said amount been tendered unconditionally without prejudice to the rights of the taxing authorities at any time during the pendency of said litigation, the same would have been received.

6. Respondents deny as alleged in paragraph 25-f of said amendment that the payment of the amount made on said 25th day of September, 1922, should be accepted in full settlement and satisfaction of all claims for back taxes by the State, County, and Board of Education of Richmond County against the Estate of J. B. White for the reason that said amount so paid is not the full amount of taxes due by said complainant as the Executor of the said J. B. White.

Further responding to said amendment, respondents say that said plea of payment and tender should be disregarded in the determination of the issues presented in the original bill:

(a) Because plaintiff failed to pay the amount admitted to be due as taxes for the years in question, prior to the filing of a bill in equity to enjoin the collection of the fi. fas issued upon assessments made by the Tax Receiver of Richmond County, in July, 1919, copies of which are attached to the original bill of complaint.

[fol. 285] (b) Because said amendment sets up no legal tender but was a tender and payment only upon the amount as fixed by said Board of Arbitration, which under the Act of 1918 respondents contend was illegal, and they say it was the duty of said plaintiff, especially when the value of the property which had been assessed was undisputed to at least, tender such an amount as he contended was equal to the percentage of assessments made upon other property in Richmond County, Georgia.

(c) Because under plaintiff's own allegations in his original bill, he set up that the general run of property in Richmond County was assessed at from 50 to 66 2/3 per cent of its value, and this being true, it was plaintiff's duty to make tender upon such basis.

(d) That the purport of plaintiffs plea, is to be relieved from the payment of taxes upon any amount, save that as fixed by said Board of Arbitration, of September 5, 1919.

(e) Because said payment and the offer made in paragraph 25-f of said amendment to "pay such an amount, if any, as this Honorable Court shall ultimately determine said estate is liable for," comes too late to save said petition from dismissal for want of equity, as it was plaintiff's duty to make such payment or unconditional tender prior to, or upon the filing of his original bill and allege the same, and then to have further offered to pay such an amount as the Court might find to be due, before he was entitled to be heard in a court of equity and especially because the values of said property is admitted, and that the same is not assessed at any more than its fair market value.

Wherefore respondents pray that said amendment be dismissed. Benj. E. Pierce, Wallace B. Pierce, A. L. Franklin, Wm. K. Miller, Attorneys for Respondents. George M. Napier, Attorney General. Seward M. Smith, Ass. Atty. General.

[fol. 286] Affidavit of Chas. A. Bohler to above paper omitted in printing.

[fol. 287] IN UNITED STATES DISTRICT COURT

[Title omitted]

OPINION—Filed June 25, 1923

William H. Barrett, District Judge

[File endorsement omitted.]

[fol. 288] J. B. White came to Richmond County in 1866, and resided there continuously until 1909, in which year he went to travel in Europe, and died at Genoa, Italy, in March 1917, leaving a will in which he described himself as of Richmond County,

Georgia, and in which he named as executor E. H. Callaway of said County. Such executor probated the will in said county as a domestic will. White was never naturalized as a citizen of the United States. Such executor filed an inventory in which were included various stocks and bonds in corporations foreign to Georgia, and which were physically in the possession of Henry Clews & Company of New York. During the years 1911 to 1917, inclusive, White returned his real estate for taxation, and $300.00 of household and kitchen furniture, but no other *pre*sonal property. Subsequent to the death of White the tax receiver of Richmond county demanded of such executor returns for taxation during the years 1911-1917, inclusive, of the said stocks and bonds. The executor insisted that they were not liable for taxation in Richmond county, and the tax receiver withdrew his demand. Thereafter Richmond county petitioned for a mandamus against said receiver to compel him to assess said stocks and bonds, and sought to make such executor a party. The court declined to make the executor a party, but allowed opportunity for taking the depositions of a member of the firm of Clews & Company. Such testimony was taken and revealed that there was held by Clews & Company for said White stocks and bonds in such foreign corporations of the following values for the respective years: for 1911, $1,012,366.67; for 1912, $1,397,671.67; for 1913, $1,344,405.83; for 1914, $1,556,915.83; for 1915, $1,443,543.83; for 1916, $1,508,436.00; for 1917, $1,375,408.50,—and further that there should be added to each amount for each year above given two notes, aggregating the sum of $12,000.00, and the further aggregate amount of $195,152.19 for the year 1917 cov-[fol. 289] ering other stocks in foreign corporations and notes and loans for that year. Included in these were 115 shares of the capital stock of the National Park Bank of New York and 100 shares of the National Bank of Commerce New York, aggregating from $57,000.00 to $99,000.00. These notes and bonds had never been in the name of White, but were always in the name of Clews & Company. White paid Clews & Company on account from time to time, leaving owing by White to Clews & Company on the 1st of January of each year the following amounts: January 1, 1911, $478,877.33; January 31, 1912, $707,294.09; January 1, 1913, $520,626.89; January 1, 1914, $712,840.80; January 1, 1915, $610,409.86; January 1, 1916, $227,476.30. On January 1, 1917, White had paid Clews all that he owed, and had to his credit $8,367.17. The tax receiver then assessed against the estate of White the said securities as follows: for 1911, $1,003,866.87; for 1912, $1,399,161.67; for 1913, $1,558,300.83; for 1914, $1,548,735.38; for 1915, $1,439,160.83; for 1916, $1,509,936.00; for 1917, $1,623,567.52.

The executor then demanded arbitration as provided by the Code of Georgia, Section 1116(d), Acts 1910, pp. 22-24, and named his arbitrator. The tax receiver appointed his arbitrator. The arbitrators failed to agree upon an umpire and he was appointed by the Board of Commissioners of Roads and Revenues of Richmond County. On the day such arbitration board was to convene, September 2, 1919, counsel representing the State of Georgia applied

to the Judge of the Superior Court of Richmond county seeking to enjoin Callaway and the arbitrators and umpire from proceeding with such arbitration. This application was denied. The arbitration proceeded. Counsel for the State and Richmond county appeared before the Board and took part in such proceedings. The following award was on September 2, 1919, made by the arbitrators and umpire as to the assessments for the respective years: for 1911, $112,744.83; for 1912, $154,550.67; for 1913, $187,927.98; for 1914, $194,138.96; [fol. 290] for 1915, $190,202.74; for 1916, $301,183.67; for 1917, $360,813.92. On September 5, 1919, such award was delivered to the tax receiver who made entries on the tax digests for the respective years in accordance therewith. On September 5, 1919, Callaway, as executor, tendered to the tax collector $27,980.88 "in full payment of the above taxes as calculated upon the assessments rendered by the Board of Arbitration on September 2, 1919." Thereafter, on September 25, 1922, such executor paid the tax collector $27,980.88 without any stipulation that it was "in full payment" and it was received "without prejudice to the rights of any of the parties in the pending litigation in reference thereto." Such executor claimed that no additional interest was owing because of the restraining order granted by the judge of the superior court of Richmond county. On September 6, 1919, the State of Georgia, in its behalf, and in behalf of Richmond County and the Board of Education of Richmond county, brought its petition, supplemental to that filed on September 2, 1919, against C. A. Steed, tax receiver, and C. S. Bohler, tax collector, of Richmond county, and prayed that they be enjoined from making the tax assessments and collecting the taxes according to such arbitration. The executor demurred to such original and supplemental petitions, as amended, upon certain *certain* special grounds and upon the general grounds that "said petition sets forth no legal or equitable cause of action" and because the "parties assuming to represent the State of Georgia in said proceedings have no legal authority to being such a proceeding", and said arbitration proceedings could be attached only by the tax receiver or by the executor. The judgment of the court was that the demurrer is "sustained and the restraining order heretofore granted is dissolved and plaintiff's petition, as amended, is hereby dismissed". The Supreme Court of Georgia has decided the mandamus proceeding, affirming that they were rightly dismissed (150 Ga. 229), and the foregoing pe- [fol. 291] titions for injunction, affirming that the injunctions were properly denied, but the different Justices assigning different reasons for such conclusion in the last petition. (150 Ga. 235; 152 Ga. 871).

The present bill is by Callaway, executor of White, against the tax receiver, tax collector and sheriff of Richmond County, and sets out the above stated facts, and, in addition, that subsequent to the said decision of the Supreme Court of Georgia, reported in 152 Ga. 871, the tax collector of Richmond county, Georgia, issued seven tax executions against orator, as executor of White, for back taxes for the years 1911 to 1917, inclusive, aggregating the principal amount of $145,568.30 and interest to date, $70,764.07, and has placed them in the hands of the sheriff of said county for the purpose of levy; that

such executions were based upon the assessments made by the tax receiver after taking the deposition of a member of Clews & Company, which assessments are set forth above; that included in such assessments, in addition to the stock in certain National Banks, was $10,500.00 of stock of the Southwestern Railway of Georgia, a Georgia corporation, which is not taxable by the State or county; that the assessments made by the tax receiver were expressly made under the provisions of the Acts of the General Assembly of the State of Georgia of 1910, as codified in Park's Political Code of Georgia, Par. 1116(d), and which expressly provides for the right of arbitration; that the right of your petitioner to such arbitration was conclusively established by the decision of the superior court of Richmond county, affirmed by the Supreme Court, 150 Ga. 235, and such decision is res adjudicata; that by reason of counsel for the State participating in such arbitration the State is estopped from any attempt to void or evade the same; that the decision by the superior court of Richmond county in the subsequent proceeding attacking such award, which was dismissed on demurrer, and which dismissal was affirmed by the [fol. 292] Supreme Court, 152 Ga. 871, is also res adjudicata; that the issuance of such tax executions by the tax collector was under the Act of the General Assembly of Georgia, approved July 31, 1918 (Acts 1918, p. 232); that the Act of 1918 did not repeal the Act of 1910, but was cumulative; that such Act of 1918 was violative of Art. 1, Sec. 3, Par. 2, of the Constitution of Georgia prohibiting retroactive legislation; that if such Act of 1918 repeals the Act of 1910 is it expressly discriminatory by preserving to tax payers who make returns to the Comptroller General the right to arbitrate and denying such right to those tax payers who make returns to the tax receivers, and such discrimination is violative of Art. 7, Sec. 2, Par. 1, and of Art. 1, Sec. 1, Par. 2, of the Constitution of Georgia, and is in violation of the Fourteenth Amendment of the Constitution of the United States; that during 1911; 1917, inclusive, the assessment of property in Georgia for taxation did not average 25% of the true value thereof, and of the class of property sought to be taxed against orator did not exceed ten per cent. of the true value; that the award of the arbitrators fixed the amounts at from 12% to 25% of the true value; that the county Board of Tax Assessors for Richmond county for the year 1918 assessed all of the securities of the said White for the year 1918 at $250,000.00; that the assessments based upon such award, and upon which your orator is willing to pay, are largely in excess of the assessments made and taxes required of other tax payers upon the same class of securities in Georgia and Richmond county; that stocks and bonds in non-resident corporations are not assessed or returned at exceeding five per cent. of their value; that during the years 1911-1917 bonds of local corporations were not returned for taxation by owners living in Richmond county for taxation; that during such years inventories of estates in the court of ordinary of Richmond county, whence information as to the White estate was obtained, showed like securities of over $1,500,000.00 value, upon which no taxes has been [fol. 293] paid, and yet neither the tax receiver nor any other agent of the State or county attempted to collect taxes on such property,

except in the case of one small estate; that such tax receiver claims that neither he nor the board of tax assessors ever assesses any property at its full value, but try to assess real estate at 66-2/3% of its value, and money, notes and securities when returned at 50% of their value; that the act of the tax receiver in making such assessments against your orator at full value, and of the tax collector in issuing the executions were discriminatory against your orator, in violation of the aforesaid provisions of the State and United States Constitutions, and that the issuance of such executions places a cloud upon the title of all property in the hands of orator, interferes with the administration of the estate, and will cause irreparable loss.

The prayers were: (a) for injunction; (b) that the assessments and tax executions be declared illegal and cancelled; (c) that the assessments fixed by the award be finally fixed as the correct amounts; and (d) for general relief.

The defendants made response as follows: They aver that the tax executions were legal; that White was a resident of Richmond county at the time of his death; that the securities in question were liable for taxation in said county and State; that the act of the board of assessors of Richmond county in fixing in 1918 the assessed value of such securities at $250,000.00 is in no way binding; that the assessments were not made under the Act of 1910, but were made under the Act of 1918, the only Act then of force on this subject; that if any error were made in the calculation of taxes this did not invalidate the tax, but can be corrected; that the arbitration was held, but that it was not authorized by law, that it was not properly organized, that the tax receiver had no power to agree to it; that the taxing authorities of the State are not estopped from raising the [fol. 294] question of jurisdiction; that counsel for the State and county stated to the arbitrators in appearing before them that they did not waive any right in so doing; that the award under such arbitration proceeding is void; that the judgments of the superior court of Richmond county and of the Supreme Court of Georgia are not res adjudicata as to the validity of the arbitration proceeding; that even if the arbitration proceeding were authorized the award was illegal because of the method adopted by the arbitrators and the umpire, and because it was fraudulent, as evidenced by the gross under-assessment; that any assessment of stock in a Georgia corporation, or of National Bank stocks, was an oversight, and can and should be corrected; that all allegations of intentional and systematic under valuations for tax assessments and of discrimination as to the class of property represented by the securities in question, or as to White and his estate, are denied; that plaintiff as executor is not in possession of any property the title to which can be clouded by the lien of the tax execution, he having turned over all real estate passing under the will to those entitled thereto; that such tax executions will not interfere with the due administration of the estate in the hands of plaintiff; and that the injunction should not be granted or the executions declared invalid.

[fol. 295] 1. Jurisdiction.—When this bill was first presented it was thought that it fell within Section 266 of the Judicial Code,

and Circuit Judge Alex C. King and District Judge Samuel H. Sibley were called by District Judge Beverly D. Evans to preside with him. They decided that the bill did not fall within such section but judge Evans did on April 29, 1922, enjoin the collection of taxes on stock in National Banks in New York, and decided that by reason of the charges of discrimination and the evidence to support the same, the status should be preserved until a full and impartial inquiry could be had. Jurisdiction is thus established as the law of this case, and in my opinion such decision is correct. As to stock in National Banks out of the State see Stanley vs. Board of Supervisors of Albany County (C. C. N. Y.), 6 Fed. 561; Revised Statutes, Sec. 5219; U. S. Compiled Statutes, Sec. 9784. As to discriminatory taxation, and there being no right in Georgia to pay an illegal tax and recover the same, Cummings vs. National Bank, 101 U. S. 153; Raymond vs. Chicago Traction Company, 207, U. S. 20; Atchison, T. & S. F. Ry. vs. Sullivan, 173 Fed. 456 (C. C. A., 8th Circuit); Union Pacific Railroad vs. Board of County Commissioners, 247, U. S. 282; Greene vs. Louisville Railway Company, 244 U. S. 499; Sioux City Bridge Company vs. Dakota County, Neb., (U. S.) 43 Supreme Court Reporter, p. 190, decided January 2, 1923.

Federal jurisdiction existing, it extends to the determination of all questions presented, irrespective of the disposition made of the Federal questions. Ohio Tax Cases, 232 U. S. 576; Greene vs. Louisville & Interurban R. R., 244 U. S. 499.

2. Are the Decisions of State Courts res Adjudicata as to Award of Arbitrators?—Nowhere in the pleadings in the State Court was the Act of 1918 plead, either as being the present law or as repealing the Act of 1910 (Code of Georgia, Sec. 1116 (d)). But the Supreme [fol. 296] Court of the State of Georgia (State of Georgia vs. Callaway, 152 Ga. 871) and judge Evans in this case decided that the Act of 1918 did repeal the Act of 1910. If the issue in the State court had been as to the validity of the award under the Act of 1910, and the judgment of the State court had been necessarily to the effect that such award was valid and legal, this would be the law between the parties as to that fact, even though the same court might have held the exact contrary under appropriate pleadings.

"An adjudication of the same subject matter in issue in a former suit between the same parties, by a court of competent jurisdiction, should be an end of litigation." Code of Georgia, Sec. 4335.

"A judgment of a court of competent jurisdiction is conclusive between the same parties and their privies as to all matters put in issue, or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered". Code of Georgia, Sec. 4336.

Perry vs. McLendon, 62 Ga. 598; Watkins vs. Lawton, 69 Ga. 671; Allen vs. Schweigert, 113 Ga. 69; Western and Atlantic Railroad vs. Third National Bank, 125 Ga. 489; Rawlings vs. State, 126 Ga.

96,—and many cases cited under the above quoted section of the Code.

But were the decisions of the State courts necessarily to the effect that the award was valid? To the bill presented on September 2, 1919, there were no defensive pleadings, and the prayer was for injunction against holding the arbitration. The prayer in the bill of September 6, 1919, was for injunction, and that the award be declared void. To this bill there was filed a general and special demurrer. The action of the judge of the superior court on the first bill was: "Petition read and considered. It is hereby refused and denied." The action on the second bill was to sustain the demurrer and dismiss the bill. The judgments in both cases are consistent with the conviction that the entire arbitration, including the award, is a nulllity. It is manifest that the Supreme Court of Georgia so considered. None of the decisions of the courts of Georgia are conclusive, as res adjudicata, in establishing the validity of the award. Standard Life Insurance Company vs. City of Atlanta, 151 Ga. 153; Savage vs. Steed, 115 Ga. 97; State of Georgia [fol. 297] vs. Callaway, 152 Ga. 871.

3. Did the Act of 1918 Repeal the Act of 1910?—Judge Evans has already decided in this case that the Act of 1918, p. 232, repealed the Act of 1910 (Code of Georgia, Sec. 1116 (d)), and is the existing law as to remedies for conditions like those in this case. This necessarily includes a decision adverse to the contention that the Act of 1918 is unconstitutional. I concur in such conclusion.

When a statute is manifestly intended to cover the subject matter of a former statute, and operate as a substitute for it, the former statute will be held repealed by implication. Johnson vs. Southern Mutual B. & L. Ass'n, 97 Ga. 622; Western & Atlantic Railroad vs. Atlanta, 113 Ga. 556; Verdery vs. Walton, 137 Ga. 213, 216; 26 Am. and Eng. Ency. of Law (2nd Ed. 731; Thornton vs. State, 5 Ga. Apps. 397 (3).

Due process is provided by the Act of 1918, because opportunity is afforded to be heard as to the excessiveness of the tax or its legality. Central of Georgia R. R. vs. Wright, 207 U. S. 127.

Under the doctrine of the right to classify the providing of different remedies for those who make return to the Comptroller from those who make return to the tax receivers is justified. The State surely has the right to provide different remedies for those taxpayers who make returns to the Comptroller General and who are in default from those make returns to the tax receivers and who are in default.

Furthermore, it is an unwarranted assumption that either a different or disadvantageous result will follow from a court of equity passing upon the question of excessiveness rather than a board of arbitration.

The Act of 1918 does not contemplate that a court of equity shall assess for taxation. The issue for it to determine is: Is the assessment excessive; and, if so, to what extent? It would enjoin only what was excessive and leave standing the assessment already made as thus modified.

[fol. 298] 4. Admissibility of the Testimony of Steed.—C. A. Steed was during the years 1911 to 1917, inclusive, tax receiver of Richmond County, and as such it devolved upon him to assess property for taxation. He made the assessments the enforcement of which the bill in this case seeks to enjoin. Petitioner has offered testimony of Steed to the following effect: In Richmond county the assessments for taxation have for many years been as to city real estate never in excess of 66⅔% of its market value and as to country real estate not generally in excess of 33⅓% and as to notes and bonds not over 50%; assessments for taxation are never made of the full market value; in 1918 the Board of Assessors of Richmond county assessed the stocks and bonds of the estate of J. B. White at $200,000.00, and notes and mortages and cash at $50,000.00, all of which were on the books as stocks and bonds; that for 1918 the estate of D. F. Jack was assessed for stocks and bonds at $150,000.00, and that the total assessments for stock and bonds in Richmond county, including the above two items, was $482,000.00; that during the past few years several large estates have been administered in the Court of Ordinary of Richmond county and he had not undertaken to assess any of them except one for back taxes because they were not brought to his attention, and the assessment against the one estate for back taxes was settled for about 30 or 33 cents on the dollar. Other portions of Steed's testimony modified some of that stated.

Objection was made that Steed was incompetent to testify to such facts because they might tend to invalidate his assessment. Reliance is had upon the following authorities: 22 R. C. L., p. 474. This is only to the effect that an officer cannot perform an act and then say that he intended other than the act denoted. Illinois Central R. R. Co. vs. Commonwealth, 108 S. W. 245, and on appeal [fol. 299] as Illinois Central R. R. vs. Kentucky, 218 U. S. 551, is to the effect that when an assessment has been finally made it passes beyond the control of the assessors and they cannot alter it by declaring what they intended, or make any agreement that such assessment would not be enforced. Chicago, B. & Q. Railroad vs. Babcock, 204 U. S. 585, merely follows the rule recognized as sound even by those who rebel at the rule prohibiting the testimony of appraisers to attack an award or jurors a verdict, that neither in the same case nor elsewhere by cross examination or otherwise can the motives and reasons actuating the officers be inquired into to create confusion and invalidate the act. Wigmore (2nd Ed.) Secs. 2349-2352; Newport Mining Company vs. Ironwood, 185 Mich. 185, 152 N. W. 1593, and Boston & Maine Railroad vs. State, 76 N. H. 91, 79 Atl. 703, are to the same effect. Eau Claire vs. Eau Claire Water Company, 137 Wis. 529, 119 N. W. 56, and Allen vs. State, 116 S. E. 534, are merely to the effect that jurors will not be heard as to what transpired or was heard during their deliberations to impeach the award or verdict.

None of such cases, nor the principles discussed therein, control here. Steed does not seek in this testimony to interpret his assessment as different from what it appears; he does not explain his rea-

sons for reaching his conclusion; he does not deal in any way with his making of these assessments. His testimony is as to acts of himself and of others not connected with his acts, and in connection with other matters most of which are of public record or knowledge. If he can not be heard on any matter that tends to invalidate an award, he could not correct an error, or explain the principle upon which he acted, though he thought such principle sound and lawful, because such principle might be unsound and unlawful. The admission of such evidence violates no sound principle; its exclusion would work an injustice.

[fol. 300] 5. The evidence is voluminous, and in some material matters contradictory. A discussion of it in detail would probably prove of but little value. I entertain no doubt from the evidence that the fixed principles controlling the officers in Richmond county who assess for tax purposes are that no property is assessed for tax purposes at its true market value, and that bonds and stocks are never assessed at above 50% of their value; that it is common practice throughout the State and acquiesced in by the taxing authorities, for bonds and stocks of non resident corporations to be not returned at all or at a very small percentage of their market value; that easy opportunity was afforded the taxing authorities of Richmond county to learn of other estates which were as liable, though in smaller amounts, as the White estate; that no proceedings were had against but one of them, and that was settled for 30 or 33 cents on the dollar; and that these facts were known to the tax receiver of Richmond county when the assessments against the White estate were made. With this knowledge the assessment against the White estate at the true market value was knowingly, wilfully and intentionally" administering "the law so as to place upon one person * * * a burden from which another person * * * similarly situated is relieved.

I have not overlooked the requirement of the statutes that property must be returned or assessed at its true market value; that taxing offerers claim not to be responsible for false returns; that the Comptroller General urges that the law be complied with; and that the tax receiver of Richmond county and tax receivers elsewhere state that there is no systematic, uniform system of taxing any kind of property at less than its true market value. But the evidence not only warrants, but practically demands, the conclusion known of all men, That, if the estate of White be required to pay taxes on bonds and stocks of non resident corporations at their true market [fol. 301] value, this estate will be discriminated against as compared with every other citizen of this county in like situation during the years for which taxes are sought, whether for current taxes or past taxes. Thus convinced, I am bound to grant protection against such discriminiation.

Had the estate of White already paid such an amount that the enforcement of any additional amount would be a discrimination? This can not be answered with confidence. There is not sufficient evidence to justify a positive and exact conclusion. The only tribunal that has attempted to reach such conclusion is the Board

of Arbitrators, whose authority in the premises has been denied, but whose investigation and conclusion can nevertheless be properly used as an aid. Upon the payment of the taxes fixed by the board I am satisfied that there will have been paid much more than the average, and probably more than any but a very few taxpayers in Richmond county on that class of property. But the significent fact is that for the year 1918 the Board of Assessors of said county assessed this class of property of the White estate at about 18% while the Board of Arbitrators for 1917 valued such property for taxation at about 24%, and the average of percentages fixed by the Board of Arbitrators for the seven years for which taxes are sought was something over 16% reckoning on the full market value, and over 24% reckoning on White's equity. I cannot justify a conclusion that any additional taxes can be demanded without unlawful discrimination.

However, the taxes owing should have been paid without condition. The amount tendered on September 5, 1919, was $27,980.88, and was upon condition that it was "in full payment of the above taxes and interest as calculated upon the assessments rendered by the Board of Arbitration on September 2nd, 1919." On September 25, 1922, the same amount was paid by the executor of the estate of White unconditionally.

[fol. 302] Under the view herein expressed I am of the opinion that there must have been paid interest on such amount,—$27,980.88,—for the period from September 5, 1919, to September 25th, 1922, and so hold.

Except as to the amount of such interest, the executions attacked in this case are cancelled, and their enforcement for any other amount is enjoined.

This June 25, 1923.

(Signed) Wm. H. Barrett, United States Judge.

[fol. 303] In the District Court of the United States for the Southern District of Georgia, Northeastern Division

[Title omitted]

Petition for and Order Allowing Appeal

Appeal to the Supreme Court of the United States

To the Hon. William H. Barrett, United States Judge:

The above named Chas. S. Bohler, Tax Collector of Richmond County, Ga., C. A. Steed, Tax Receiver of Richmond County, Ga., J. T. Plunkett, Sheriff of Richmond County, Ga., State of Georgia, Richmond County, and Board of Education of Richmond County, appellants, feeling aggrieved by the decree rendered and entered in

the above-entitled cause on the 25th day of June, 1923, do hereby appeal from said decree to the Supreme Court of the United States, for the reasons set forth in the assignments of errors filed herewith, and they pray that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record proceedings and evidence upon which said decree was based, duly authenticated be sent to the Supreme Court of the United States, October Term, 1923, under the rules of such court in such cases made and provided.

And appellants pray that the proper order relating to the required security to be required of them on this appeal be entered.

George M. Napier, Attorney General; Seward M. Smith, Asst. Atty. General; Benj. E. Pierce, Wallace B. Pierce, Wm. K. Miller, Solicitors for Appellants.

[fol. 304] The appeal prayed for in the foregoing petition of Chas. S. Bohler, Tax Collector of Richmond County, Georgia; C. A. Steed, Tax Receiver of Richmond County, Georgia; J. T. Plunkett, Sheriff of Richmond, Georgia; State of Georgia, Richmond County, and Board of Education of Richmond County, versus E. H. Callaway, Executor of J. B. White, is hereby allowed. Ordered further that appellants give security in the sum of $1,000.00/100, in the terms of the Statute in such cases made and provided.

This 28th day of August, 1923.

Wm. H. Barrett, United States Judge.

[fol. 305] In the District Court of the United States for the Southern District of Georgia, Northeastern Division

[Title omitted]

Citation on Appeal—Filed Aug. 28, 1923; omitted in printing

[fol. 306] Due and legal service of a copy of the foregoing citation on appeal is hereby acknowledged. All further notice and service waived.

This 28 day of August 1923.

E. H. Callaway & W. M. Howard, Solicitors for Appellee.

[fol. 307] [File endorsement omitted.]

[fol. 308] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Transcript of Evidence Introduced on the Hearing in the Above-stated Case—Filed Aug. 28, 1923

NOTE.—It was stipulated between counsel that all evidence desired might be offered in such form as either side wished, such as by way of affidavits and uncertified copies of court proceedings, reserving, however, the right to object to the admissibility thereof upon any other ground, than its form.

The Complainant below, Appellee herein, offered in evidence:

1. The executions sought to be enjoined, correct copies of which are attached to original Bill as Exhibits A-1 to A-7, both inclusive, which in the answer were admitted to be correct.

2. The assessments upon which, such executions were issued, which are also attached as Exhibits B-1 to B-7, both inclusive, to the bill of complaint, and admitted in the answer of respondents to be true and correct.

3. Original proceeding demanding arbitration and appointment of arbitrators, copies of which are set out as Exhibits D, E, F, G and H, to original bill, were considered in evidence, but to avoid duplication, the same are not copied here.

[fol. 309] 4. Certified copies of the entire records with all entries thereon, and all exhibits thereto, which appear as Exhibits "I" and "J" attached to complainant's amendment, allowed by Hon. Wm. H. Barrett, United States Judge, September 21, 1922, and filed in office, September 26, 1922. Exhibit "I" consisted of a copy of a petition in equity, brought in the superior court of Richmond County, Georgia, to enjoin the holding of the arbitration which had been demanded by complainant, together with the bill of exceptions to the Supreme Court of Georgia, and the decision thereof. Exhibit "J" attached to said amendment, consisted of a copy of a petition in equity brought in the superior court of Richmond County, seeking to set aside the award which had been returned by said Board of Arbitration, upon the grounds that the same was void for various reasons set out. Attached to said last Exhibit, was also as exhibits, all the evidence which had been submitted to the Board of Arbitration, when held. Complainant in the lower court also introduced separately and detached from said exhibits all original documents, affidavits and other evidence, which had been used before the Board of Arbitration, which evidence, in brief, was as follows:

Exhibit A, the oath of the arbitrators.

Exhibit- B-1 to B-7, both inclusive, consisted of the assessments made by Steed, Tax Receiver, for the years 1911 to 1917 inclusive, together with a list of stocks and bonds which had been assessed, including the values thereof.

Exhibit B-2, brief of testimony of J. B. Clews, in which he testified as to the amount of stocks and bonds held by his firm for the account of J. B. White, giving the names, and lists thereof, which securities were the same as those assessed by the Tax Receiver for the years in question.

Exhibit C-1, was an extract from the Comptroller General's reports from the years 1911 to 1917 inclusive, showing the amounts of money, solvent debts, stocks and bonds, which appeared to have been returned in certain Counties of the State for said years.

Exhibit C-2, was an affidavit of J. B. Clews, in which he testified [fol. 310] as to the amount of indebtedness due his firm by said White, during said years in question, and as to the manner in which said stocks and bonds had been purchased by his firm for the account of said White.

Exhibit C-3, an affidavit of John W. Dickey, giving his opinion of the amount of stocks and bonds which he estimated was owned by the people of Richmond County.

Exhibit C-5, an affidavit of Rufus H. Brown, giving the amount of deposits of the Banks of the City of Augusta, for the years 1916, 1917 and 1918.

Exhibit C-6, consisted of an affidavit of E. H. Callaway, giving a list of uncancelled security deeds, which he stated appeared of record in the Clerk's Office of Richmond County, for the years 1909, 1910, 1912, 1913, 1914 and 1915.

Exhibit C-6, joint affidavit of J. S. Bussey and Henry G. Howard, of like import.

Exhibit C-7, inventory of the Estate of William F. Benson, showing amount of cash, of $92,587.38.

Exhibit C-7, affidavit of E. H. Callaway, stated that he had examined sixty-six estates in the Ordinary's Office for several years prior thereto, which showed an aggregate amount of $1,579,122 worth of stocks and bonds in foreign corporations, cash in Bank, $180,489.

Exhibit C-8, testimony of C. A. Steed, Tax Receiver. On direct examination he testified:

I was Tax Receiver of Richmond County in 1918 and remember the assessments made against the White Estate for that year by the Board of Equalizers, which was $250,000.00. I remember the Jack Estate. It was assessed at $150,000.00. If the entire returns of stocks and bonds in Richmond County for 1918, was $182,000, that would leave to the balance of the County $132,000.00. We had a rule not to assess for the full market value; in starting out where no arbitration was demanded I would make the assessment at full market value, but whenever it got down to arbitration, I never made it at true market value, but would almost always take the first assess-

ment and put it down, and if the parties forced me to an arbitration, would settle on some basis later on lower than the full market value. The Board of Assessors never go over two-thirds valuation on mortgages, stocks and bonds. I have not been doing that. That was done by the Board of Assessors. They have been in existence about six years. When I make assessments it is generally in accordance with the property value. I have never undertaken to assess any property at its full market value. I know of other large estates which have been administered here. I have not undertaken to assess these. It has not been brought to my attention. I begin to [fol. 311] see that I will have to go after them. So far I have not gotten after them. I have not been ordered by the Comptroller General to do so. I had one estate that I had adjustment in, the Benson Estate. Settled this estate with Mr. Hamilton Phinizy and Pierce Bros., who represented it, at about 33¼ cents on the dollar.

Cross-examination:

I never reported any of these instances that Judge Callaway asked me about to the Comptroller General. I have never examined those records. I knew of those estates in a general way. I didn't think I had anything to do with it until this case came up, when the law was changed last August. I never did have a taxpayer come in to make his returns and state in answer to question #17 that he had $1,000,000, and I tell him that "I will assess you at $200,000." If you make a return of $100,000, I put you down at $100,000. If you come to me as a taxpayer and make your return and say you have $1,000,000, I put down at $1,000,000.

The amendment allowed September 21, 1922, and filed September 26, 1922, which contains in full all the foregoing evidence, having been specified as a part of the record on appeal, in order to avoid duplication, the same is not attempted to be set out more in detail in this transcript of evidence.

5. Affidavit of himself, dated April 20, 1922, wherein he swore he was still in possession and control of assets of the Estate of J. B. White in excess of $300,000, consisting of 500 shares of Georgia Railroad & Banking Co. stock, worth $100,000, 261 shares Augusta Factory Stock of Richmond County, approximate value, $10,000, $76,000 in City of Augusta bonds, worth approximately $75,000, and over $30,000 in cash on deposit in banks, besides other securities; that while deponent in December, 1918, transferred to the trustees under said Will, all the real estate located in the City of Augusta, and subsequently transferred to the trustees the plantation in Richmond County known as the Dye Place, and on January 1, 1919, transferred by a written instrument to Henry Clews & Co., of New York, as Agents for the trustees under the Will of White, all the securities which had previously been held by said Clews & Co. for said estate, and at the same time transferred stock owned by said estate in the Graniteville Manufacturing Co., of Aiken, South Carolina, and in the John P. King Manufacturing Co. of

Augusta, Ga. and retained in his possession assets and securities in excess of $300,000 in value, and still holds the same as executor for purposes of administration; that when he first qualified as executor, he was informed by Henry Clews & Company, that all stock held for the estate of White had been originally bought by Henry Clews & Company, and the certificates representing the same were in the [fol. 312] name of Henry Clews & Company, and all bonds were held by them, none of which certificates of stock ever stood in the name of White, nor had any of said bonds ever been in his possession, and upon the suggestion of said Henry Clews & Company that it would be more convenient to let the title and possession remain in Henry Clews & Company in order to facilitate transfers when the estate should be *would* up, deponent consented; that he had never had the physical possession of any of the certificates representing said stocks, nor any of said bonds, nor had any certificates representing said stocks ever been issued to him as executor, but as said stocks and bonds belonged to the Estate of White, said Henry Clews & Company continued to hold them for the account of deponent, as executor, and to make monthly reports of collection of interest and dividends thereon, and that deponent inventoried the same as assets belonging to the estate of said J. B. White, etc.; that deponent was told by testator, on numerous occasions, that he was a native of Ireland, coming to the United States in 1866, settling in Augusta, Georgia, and that he had never been naturalized; that White resided in Richmond County from 1866 to August, 1909, when he left Georgia and the United States for Europe, and never returned to the United States; that deponent had made diligent search of the records in the office of the Clerk of the Superior Court of Richmond County for a naturalization of White prior to 1890, but found none, and had searched the records of the District Court of the United States since 1890 down to 1909, and found no such evidence of naturalization; that White died in Italy, March 31st, 1917; that deponent attached to his affidavit as Exhibit "1," a copy of the affidavit of Marion H. McPherson and Robert W. Dugal, which set forth as an exhibit thereto, a list of all the securities held by Henry Clews & Company for the account of White for the years 1911 to 1917 inclusive, with the valuations for each of said years, and as Exhibit "2" he attached the original papers setting forth stock in foreign corporations, and choses in action, and a list headed "Stocks not Taxed and Deducted," which affidavit and paper so attached, he stated, had been furnished him by C. A. Steed, Tax Receiver, at the time of making the assessments against the Estate of White on July [fol. 313] 28th, 1919, copies of which are set forth as Exhibits B-1 to B-7 of the original Bill, and were furnished to deponent by said Steed, Tax Receiver as the information upon which he had made said assessments; that in the spring of 1918, deponent made a return to Steed, Tax Receiver of the local stocks, money and notes including the securities then held by Henry Clews & Company, belonging to the said Estate of White, and fixed the aggregate amount of his return at $50,000, and after making this return, he was notified by said Steed, Tax Receiver that the same had been rejected,

and deponent as executor was cited to appear before the local Board of Assessors, and upon appearing before it, the Board had in its possession a list of all securities, stocks, bonds, notes and other assets as taken from the inventory of said estate filed in the Ordinary's Office, being all the securities held by Henry Clews & Company for the Estate of J. B. White, etc., and included the securities set forth and valued in the affidavit of McPherson and Dugal, set forth as Exhibit "1," and all the securities, notes and loans set forth as Exhibit "2," and including all the securities and choses in action covered by the assessment made by Steed, Tax Receiver for the year 1917 against said estate, a copy of which appears as Exhibit "B-7" to the original bill; and also other monies and securities in possession of deponent as executor for the year 1918, covered by neither of said papers, which said Tax Receiver furnished deponent as a basis of his assessment for the year 1917, set forth in Exhibit "1" and "2" hereto, and after full consideration, said Board of Assessors assessed all of said securities and choses in action for the year 1918 at $250,000; deponent attached as Exhibit "3," the original form of printed notice of said assessment furnished him on the 6th day of August, 1918, by Steed, Tax Receiver; that the said Steed, as Clerk of the said Board of Assessors and Tax Receiver of said County, subsequently notified deponent that the assessment had been divided as follows: $50,000 on money, notes, etc., and $200,000 on taxable stocks and bonds for the year 1918.

That among the stocks in non-resident corporations held by Henry [fol. 314] Clews & Company for the years 1911 to 1917 as listed, and valued by McPherson and Dugal in their joint affidavit, and covered and included at the full alleged value thereof in the assessment by said C. A. Steed, Tax Receiver, for each of the years from 1911 to 1917 in the assessments set forth as Exhibits "B-1" to "B-7" inclusive, attached to the original bill, there were 115 shares of the capital stock of the National Park Bank, and 100 shares of the National Bank of Commerce, both of which were National Banks, and located in the City of New York, and not in Georgia, and that the valuation of said stock was expressly included in said assessment.

That on the morning of September 5th, 1919, C. S. Bohler, Tax Collector of Richmond County, phoned deponent that the award rendered by the Board of Arbitration on September 2, 1919, had been entered upon the Tax Digest of the County, and that if he would come down to his office, they would figure the taxes due thereon, and that deponent immediately went to said office, where said Bohler exhibited to him the complete arbitration proceedings which had been fastened with brads in the Tax Digest in the office of said Tax Collector for the year 1917, where it appears fastened today, copy of which is attached to said affidavit as Exhibit "4"; that deponent was informed such entry was in pursuance of the law, and the only manner in which the awards of arbitrators were ever entered upon the Tax Digest. The said Bohler then went over the calculation of taxes for each of said years, and entered the same in pencil upon the sheet of paper hereto attached marked Exhibit "5," showing a total amount of taxes due thereon of $21,950.00,

principal, and accrued interest due to that date of $3,030.88; that deponent immediately filled out a check on the Planters Loan & Savings Bank for the amount of $27,980.88 and tendered the same to said Bohler, Tax Collector, in payment and settlement of said taxes, and deponent was informed by said Bohler, that he had been informed by counsel representing said State and County that they protested against the accepting of said taxes, and that he had written to the Comptroller General of the State of Georgia for instructions, [fol. 315] and had not received a reply, and for that reason could not accept the check, and deponent asked said Bohler, Tax Collector, if he would accept the check so tendered as a legal tender, or whether or not he would have to get the cash, and said Bohler advised deponent that he would consider the check as a tender, such original check for such amount as above stated, being attached to the affidavit of deponent as Exhibit "5"; that deponent wrote in substance, in pencil, the conversation had between himself and said Tax Collector on the same sheet of paper on which he had taken down the amount of taxes calculated by the Tax Collector, signed the same in pencil and had the said Bohler sign the same, and dated it, Augusta, Georgia, September 5, 1919, which is attached to said affidavit as Exhibit "5."

That on March the 11th, 1922, said Bohler, Tax Collector, notified deponent that he had issued tax fi. fas. against him as executor of White in the amounts of the assessments made by the Tax Receiver on July 28th, 1919, and as soon as he had entered the same on the tax execution docket, he would deliver them to the Sheriff of said County for levy, and deponent called upon J. T. Plunkett, Sheriff, and requested that whenever he received said tax fi. fas. before levying same, to notify deponent, and that he, deponent would point out the property belonging to White upon which the fi. fas. could be levied; that about the 15th of March, 1922, said Sheriff called deponent and informed him that he had received the fi. fas. and was ready to levy the same, and deponent requested him to wait a few days, as it was too late to levy and advertise for Sheriff's sales in April; and that on March 21, 1922, the Sheriff again called deponent and stated that Pierce Brothers, who were representing the State and County, and the Tax Receiver, were urging him to levy the same, and deponent informed the Sheriff that he was preparing to apply for an injunction to restrain the levy of said fi. fas. and it would be useless to levy the same on the real estate in Augusta, formerly belonging to J. B. White, as deponent had transferred the real estate several years ago to the Trustees under the Will, and that the assets which deponent still had in his hands as executor [fol. 316] were stocks and bonds consisting of stock in the Georgia Railroad and Banking Company, stock in the Augusta Factory, City of Augusta bonds, and other stock, and that if deponent did not procure a restraining order in a day or two, he would exhibit to the Sheriff said stocks and bonds of ample value to satisfy said fi. fas. for the purpose of levying the tax fi. fas. thereon, in ample time for advertisement for the May Public Sales.

That on August 27th, 1919, as soon as deponent learned from

Chas. D. Carr, the Umpire, that he had been appointed as such, etc., deponent then called B. E. Pierce, of the firm of Pierce Bros., who were representing the State and County and the Tax Receiver in said arbitration, and requested an agreement as to the time of hearing before the arbitrators, and Pierce Bros. notified deponent that their associate W. K. Miller had left that morning for the mountains of North Carolina, and would be gone for some time, and that the hearing could not be had until his return to the city; that upon deponent's insisting on an agreement as to the time, Pierce stated to deponent that he would call up Thos. S. Gray, the arbitrator who had been appointed by the Tax Receiver, and let deponent hear from him later; that in a few minutes said Pierce called up deponent and notified him that said Gray had left the City for the mountains of North Carolina on the same train which said Miller had left on, and that the arbitration could not take place until the return of said Gray; that on the 28th of August, deponent being under the impression that the law required said arbitration to take place within ten days after the appointment of the umpire, requested said Chas. D. Carr, Umpire, to communicate with said Gray and urge him to return to the city for said arbitration, and upon a failure of said Gray to return at the request of said C. D. Carr, deponent called upon said C. A. Steed, Tax Receiver, who appointed said Gray, to urge his return, and said Steed notified dependent that the said Gray declined to give him any information as to when he would return, and subsequently notified deponent that said Gray had forwarded his resignation to Pierce Bros., with instructions to them to do with such resignation as they saw fit, and further advised deponent that said Pierce Bros. had informed him that there [fol. 317] was no limit as to time when said arbitration could take place under the law; that all efforts of deponent to get the said Gray to return to Augusta, failed, until on Monday, September 1st, for holding said arbitration.

Exhibit "1" attached to this affidavit is a joint affidavit of Marion H. McPherson and Robert W. Dugal, who swore that they were Loan Clerks in the Loan Department of the Bankers Trust Company of New York, and that it was their duty to figure the value of securities deposited as collateral for loans with said Trust Company, and each has examined Exhibit A attached to their affidavit, which is a transscript from the books of Henry Clews & Company of the account of J. B. White as attached to the deposition of said J. B. Clews in the case of State of Georgia, and County of Richmond vs. C. A. Steed, as Tax Receiver; that what appears upon said Exhibit "A" in black is a list of the securities, and what appears in red ink is the market value of said securities according to The Commercial and Financial Chronicle, which is the recognized standard publication in the City of New York, showing the market quotations each day on stocks and bonds, both listed and unlisted, in the City of New York, and is duly received in the courts of New York as evidence of value of the securities quoted therein on the days named, and that deponents at the request of Benjamin E. Pierce and W. K. Miller, counsel for the plaintiffs in said case, have examined the

files of said publication and calculated the market value of the securities and placed the result opposite the same, said examination being as of the dates specified, thus:

Said securities on February 1, 1911, were of the market value of	$1,012,366.67
On January 31, 1912	1,397,671.67
" " 1, 1913	1,344,405.83
" " 1, 1914	1,556,915.83
" " 1, 1915	1,443,500.83
" " 1, 1916	1,508,436.00
" " 1, 1917	1,375,408.50

Exhibit "A" attached to the foregoing affidavit of McPherson and Dugal, consisted of the following lists of stocks and bonds owned by the said J. B. White, and on deposit with said Henry [fol. 318] Clews & Company, which gave the names, and numbers of shares in the corporation, and the market value thereof, for each of said years, thus for the year 1911 appeared as follows:

1911.

Feb. 1.	To Balance		$478,877.33
Long	25	M N. Y. City 4% (1958)	24,750.
	200	M N. Y. City 4% (1959)	200,000.
	$300	Atl. Coast Line Ctf. of Indebt. 4%	300.00
	7	M Atchison 4% (1955)	7,606.67
	3	" " 5% (1917)	3,325.
	2000	Reading	157,000.
	900	Nor. Pacific	111,600.
	600	So. Pacific	71,400.
	300	Lou. & Nashville	43,500.
	200	Gt. & Nor. Pr.	25,800.
	300	Ont. & Western	12,600.
	200	Un. Pacific	35,400.
	200	Un. " Pr.	18,600.
	100	Atl. Coast Line	12,300.
	100	Norf. & Western	10,700.
	100	Va. Cham. Pr.	12,500.
	200	N. Y. Central	22,600.
	600	Atchison	63,600.
	100	" Pr.	12,300.
	115	Natl. Park Bk	41,400.
	100	Nat. Bank of Com.	20,600.
	25	Standard Oil	15,550.
	3	Lou. Prop.	300.
	105	So. W. Ry. of Ga.	10,500.
	615	Balt. & Ohio	67,035.
	100	So. Rwy. Pr.	6,500.
	200	R. Isl. Co. N. J.	6,600.
			$1,012,366.67

Practically the same number of shares of stocks and bonds were owned by said White for the several years in question, differing only slightly in value and some few changes, a list for each year being attached, but to avoid duplication, we shall not set the same out more in detail here.

Exhibit "2" attached to the above affidavit of E. H. Callaway, is as follows:

EXHIBIT "2"—Omitted; identical with Exhibit C on side page 39

[fol. 319] Exhibit "3" attached to said affidavit of Callaway's consisted of a communication from Local Board of County Assessors for Richmond County, to said Callaway, as executor of said White, advising him of the assessments said Board had placed upon stocks and bonds owned by said White for the year 1918. In one column was [fol. 320] taxpayer's valuation of bonds, stocks, etc., $50,000; and another column, showed Local Board's valuation, $250,000.00.

Exhibit "4" attached to said affidavit was as follows:

Omitted; printed side pages 41 to 43

STATE OF GEORGIA,
Richmond County:

Sept. 2nd, 1919.

The arbitrators and the Umpire selected as aforesaid having this day had under consideration the valuation of the personal property [fol. 321] of the Estate of J. B. White for the years 1911, 1912, 1913, 1914, 1915, 1916 and 1917, for taxation upon consideration thereof have fixed said valuation at:

For year	1911	$112,744.83
" "	1912	154,550.67
" "	1913	187,927.98
" "	1914	194,138.96
" "	1915	190,202.74
" "	1916	301,183.67
" "	1917	360,813.92

In witness of which they have hereunto set their hands and affixed their seals, this the day and year above written.

Thos. S. Gray, Arbitrator. P. E. May, Arbitrator. Chas. D. Carr, Umpire.

was as follows:

The Planters Loan & Savings Bank

Augusta, Ga., Sept. 5th, 1919. No. 67.

Pay to the order of Chas. S. Bohler, Tax Collector, $27,980.88, Twenty Seven Thousand Nine Hundred and Eighty 88/100 dollars.
E. H. Callaway, Executor of J. B. White."

	Rate	Assessment	Taxes	Int. to Sept. 5, 1919
1911	1.35	$112,744.83	$1,522.45	$821.20
1912	1.35	154,550.67	2,086.43	980.74
1913	1.46	187,927.98	2,743.75	1,096.30
1914	1.39	194,138.96	2,698.53	889.37
1915	1.46	190,202.74	2,776.96	720.85
1916	1.48	301,183.67	4,457.51	845.05
1917	1.57	360,813.92	5,664.77	677.37
		$1,501,562.77	21,950.00	6,030.88
			6,030.88	
			$27,980.88	

My check as Executor of J. B. White, on Planters Loan & Savings Bank, for $27,980.88/100 tendered to Chas. S. Bohler, Tax Collector Richmond County on Sept. 5, 1919, in full payment of the above taxes and interest as calculated upon the assessments rendered by the Board of Arbitration on Sept. 2, 1919.

The check was refused by Chas. S. Bohler, Tax Collector for reason that he had written to Comptroller General and had not heard from [fol. 322] him, Chas. S. Bohler stating that he would consider the tender of the check as legal tender, without requiring the tender of cash.

E. H. Callaway, Executor of J. B. White. Chas. S. Bohler, Tax Collector, Richmond Co., Ga. Augusta, Ga., September 5, 1919.

6. The published and official reports of Wm. A. Wright, Comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, were introduced in evidence by the plaintiff, verifying the figures quoted in the affidavits herein set forth of H. C. Butler, H. D. Glanton, T. J. Thornton, J. E. Camp, J. Zack Salmon, Sam L. Graham, G. W. Lokey, W. A. Watson, W. W. Hardaway, J. Frank Carswell, J. G. Herren, A. C. Zachry, A. H. Winter, B. Paul Smith, W. S. Hubbard, G. E. Parks, Geo. T. Daniel, Idus E. Brewer, J. A. Robertson, John Lamkin, P. B. Mundy, Edw. F. Lowell, Jr., Wm. L. Grayson, A. B. Moore, Jr., A. M. Marshall, C. D. Leonard,

Jr., H. R. De Jarnette, Morris Harris, Edw. B. Harrold, W. K. Young, G. W. Graham, Jesse C. Palmer, E. E. Chance, W. M. Fulcher, Wm. H. Davis, P. N. Combs, Clement E. Sutton, Frank E. Callaway, and F. B. Sims, as taken from the Comptroller General's reports of returns and assessments of the classes of property named for the respective counties named, for the years from 1911 to 1918 inclusive.

The published report of the Comptroller General for the year 1912 contained on pages 13 and 14 thereof, the following statement:

Revision of Tax System

"A thorough revision of our revenue system is needed and has been repeatedly urged by this Department. This is a subject of vital importance to all classes of citizens and should receive the attention of the General Assembly at its approaching session. The defective and disjointed machinery for assessing property for taxation permits much of the taxable property of the State to escape taxation altogether, and a very much larger proportion to evade its just and equitable part. It is not necessary for me to state that the evils of our system obtain equally in the case of assessment of property of individuals as well as corporations, and as well in the several counties of the State. Indeed, it is a well known fact that in many cases the assessment of property in counties adjoining each other, and where practically like conditions exist, vary very widely, thus placing on citizens in one county heavier burden- than are borne by their neighbors in the other. All taxation should be uniform, and a system of assessing property should be provided to accomplish as far as pos- [fol. 323] sible absolute uniformity. Just in so far as this is not obtainable the system is defective and necessarily lays the burden of the government unequally and unjustly. In addition to the lack of uniformity and equality in our tax assessments which I have said so uniformly obtain under our present system, there is yet a much greater evil resulting from it, to which I would respectfully invite your attention. I refer to the listing for taxation of such property as might be termed invisible personal property, such as notes, mortgages, accounts, stocks, bonds and choses-in-action. It is a generally known fact that this class of property in this State represents a considerable part of the wealth of Georgia, yet it is equally true that but a very small amount of it is ever returned for taxation. Some method should be adopted to reach this property and place it on the tax books, and thus compel it to bear its just burden of the government. The State of Alabama has a statute providing for county tax commissioners to look up all omitted property from the tax rolls of their counties, their compensation for such service being solely on the commission basis. I might add that the City of Atlanta has tried this method very satisfactorily for several years, and I would recommend that something of this kind be provided for the State. The present system of assessment is but little better than voluntary contributions by taxpayers to the State's revenue."

The various tables in said reports showed the returns of different classes of property as returned in the various counties of the State, as well as in the State as a whole. The totals for the State of the classes of property named, were as follows:

Year	Value of improved property	Value of merchandise	Money and solvent debts	Stocks and bonds
1911	$192,419,509	38,971,929	52,004,236	2,939,650
1912	193,197,948	41,571,526	50,534,356	2,802,550
1913	195,343,616	41,032,904	50,086,210	3,324,580
1914	235,628,438	43,311,760	56,386,283	2,557,881
1915	236,699,369	41,957,386	53,559,002	2,601,150
1916	240,974,478	40,382,636	50,700,597	1,721,508
1917	244,574,762	44,246,871	53,722,017	1,657,948
1918	269,443,399	52,671,492	65,613,596	1,972,152

[fol. 324] 7. Certain extracts from the 7th Annual Report of Hon. H. J. Fulbright, State Tax Commisioner, for the year 1920. This report gave a general regime of his acts and doings and recommendations with reference to the Tax System of Georgia. The express parts introduced in evidence being excerpts from pages 5, 6, and all of pages 23 to 27.

From page 5, as follows:

"Values were not ordered reduced in any county, as being disproportionately high, for the very evident reason, that they nowhere approached the legal requirement of 100%, and for the further reason that the legislature had made appropriations that called for more money than would be realized from the highest values that could be secured."

From page 6, the following:

"At that time (meaning the year 1919) the whole State was enjoying prosperity of such an unusual character as to very much inflate values, and for that reason the State Tax Commissioner did not think it wise to insist upon a strict compliance with the law that requires all property returned at full value. On the other hand it was decided to adopt as a minimum basis for equalizing purposes 35 per cent of the then estimated true values."

Pages 23 to 27, are as follows; having reference to real estate only:

"Estimated True Value as of January 1st, 1920, and per Cent of Same Represented by Digest as Finally Approved by State Tax Commissioner

Table No. 2

County	Value	Per cent
Appling	$8,174,312	56
Atkinson	4,200,162	50
Bacon	5,854,145	41
Baker	5,523,660	36
Baldwin	15,844,000	33

County	Value	Per cent
Banks	7,440,046	35
Barrow	14,541,957	30
Bartow	22,982,000	39
Ben Hill	12,010,777	38
Berrien	15,245,371	37
Bibb	94,596,737	47
Bleckley	9,477,712	36
Brooks	20,837,017	44
Bryan	5,764,775	34
Bulloch	35,587,627	31
Burke	36,201,432	35
Butts	1,228,780	33
Calhoun	7,900,103	36
Camden	4,868,340	55
Campbell	12,989,752	30
Candler	7,929,052	36
Carroll	33,312,230	33
[fol. 325] Catoosa	5,368,274	42
Charlton	6,063,103	35
Chatham	103,875,858	56
Chattahoochee	2,653,620	36
Chattooga	18,597,556	34
Cherokee	20,521,687	34
Clarke	38,957,125	53
Clay	5,605,577	32
Clayton	7,734,408	37
Clinch	8,224,899	34
Cobb	39,075,500	32
Coffee	14,681,955	35
Colquitt	23,663,216	36
Columbia	8,646,896	34
Cook	9,519,650	41
Coweta	23,989,848	35
Crawford	8,416,646	32
Crisp	23,104,500	34
Dade	6,438,612	28
Dawson	3,132,003	36
Decatur	28,093,200	38
Dekalb	47,452,570	42
Dodge	22,301,100	32
Dooly	19,315,758	33
Dougherty	33,121,343	37
Douglas	6,422,172	50
Early	13,292,566	47
Echols	2,411,490	44
Effingham	10,790,506	35
Elbert	22,248,554	31
Emanuel	20,570,908	37
Evans	7,678,992	28
Fannin	7,157,332	28

County	Value	Per cent
Fayette	10,266,959	30
Floyd	50,361,183	39
Forsyth	8,596,000	32
Franklin	10,516,834	38
Fulton	299,363,520	55
Gilmer	6,341,225	33
Glascock	3,574,850	32
Glynn	18,092,582	52
Gordon	14,632,300	40
Grady	16,408,096	31
Greene	24,155,750	31
Gwinnett	26,409,400	34
Habersham	10,912,359	34
Hall	35,296,692	35
Hancock	17,681,848	30
Haralson	10,245,580	41
Harris	6,559,118	58
Hart	9,593,928	37
Heard	4,593,570	47
Henry	21,757,975	34
Houston	31,447,610	27
Irwin	11,476,342	36
Jackson	28,223,000	32
Jasper	14,079,962	32
Jeff Davis	7,192,193	31
Jefferson	22,895,936	35
Jenkins	14,010,182	34
Johnson	11,305,880	32
Jones	9,796,080	34
[fol. 326] Laurens	46,488,363	36
Lee	8,152,700	38
Liberty	7,161,300	55
Lincoln	7,997,468	35
Lowndes	36,727,587	33
Lumpkin	5,217,340	30
Macon	20,266,759	28
Madison	14,360,010	35
Marion	5,171,862	40
McDuffie	12,626,300	34
McIntosh	4,328,304	36
Meriwether	21,461,847	34
Miller	4,929,166	56
Milton	4,376,444	41
Mitchell	24,274,950	35
Monroe	24,669,115	28
Montgomery	9,062,423	35
Morgan	29,742,900	31
Murray	11,589,710	30
Muscogee	57,627,360	60
Newton	25,454,280	32

County	Value	Per cent
Oconee	10,737,400	35
Oglethorpe	2,186,076	33
Paulding	7,212,895	52
Pickens	7,406,620	27
Pierce	8,887,098	53
Pike	21,440,320	31
Polk	14,379,700	56
Pulaski	15,065,400	28
Putnam	16,225,252	34
Quitman	2,423,307	32
Rabun	3,415,240	43
Randolph	12,151,780	35
Richmond	86,375,742	50
Rockdale	10,183,521	33
Schley	4,957,616	35
Screven	22,967,470	29
Spalding	24,756,890	33
Stephens	8,265,346	35
Stewart	10,412,330	40
Sumter	38,291,756	30
Talbot	5,722,990	44
Taliaferro	6,442,560	34
Tattnall	15,629,723	34
Taylor	9,678,432	30
Telfair	15,207,720	38
Terrell	20,170,300	28
Thomas	32,913,096	38
Tift	17,656,027	36
Toombs	1,709,457	30
Towns	1,918,450	45
Treutlen	6,584,436	35
Troup	49,783,820	32
Turner	14,089,592	33
Twiggs	9,907,554	33
Union	2,974,056	36
Upson	10,546,520	45
Walker	19,318,630	40
Walton	28,719,540	35
Ware	20,829,342	41
Warren	11,016,672	31
Washington	27,812,448	32
Wayne	12,783,150	49
[fol. 327] Webster	3,788,185	46
Wheeler	8,578,142	35
White	5,793,832	31
Whitfield	20,411,810	35
Wilcox	15,396,917	32
Wilkes	28,457,040	34
Wilkinson	11,000,428	29
Worth	21,919,572	32"

8. An affidavit of E. H. Callaway, dated September 18, 1922, wherein he swore that certain inventories of twelve estates, formerly residents of said County, certified copies of which were offered in evidence, were included in the inventories of the sixty-six estates that were examined by him and referred to in his affidavit of August 23, 1919, and also in his affidavit of April 22, 1922, and were selected at random, showing some of the larger estates administered in said County, and some of the smaller estates; for the years 1915 to 1918, the records of inventories disclosed more than one hundred estates where the decedents were residents of said County at the time of their death, and owned either money, notes and credits, or taxable stocks and bonds, or both, and for the years 1911 to 1917 inclusive, show the record of more than two hundred estates where the decedents were residents of said County at the time of their death, and owned either money, notes and credits, or taxable stocks and bonds, or both, and in all of said instances the Tax Digests of said County for the years immediately preceding the death of said intestate, disclosed that they made no returns of any money, notes or credits, or taxable stocks or bonds for taxation, and in the few rare instances where any such property was returned, it was only in a nominal amount; that the proportion of said classes of property returned by the decedents in the twelve estates of which certified copies of the inventories thereof and the tax returns of said decedents, were introduced in evidence, disclosed a fair average of all tax returns made of said classes of property, to wit, money, notes and credits, and taxable stocks and bonds for all the decedents of said County, inventories of whose estates appear of record in the office of the Ordinary of said County, for the [fol. 328] years 1911 to 1918 inclusive; that notwithstanding said facts, with reference to said estates were brought to the attention of C. A. Steed, the Tax Receiver of said County, and to the attention of his attorneys, who brought the proceedings to collect the back taxes from the estate of J. B. White, in the affidavit of deponent of August 23, 1919, which was used before the Arbitrators in the Tax Arbitration proceeding on September 2, 1919, and were again called to the attention of said attorneys in the affidavit of deponent of April 22, 1922, on the hearing for interlocutory injunction in the present case, no proceedings have ever been instituted either by the said tax receiver, nor by his said attorneys who instituted the proceedings in this cause, nor by any other tax officials of said State or County; the only other instance of any attempt to collect back taxes, as testified by the Tax Receiver before the Arbitrators, was on the Estate of Wm. E. Benson, and that this was settled for 33⅓% on the dollar; and that the conduct on the part of said attorneys representing said tax officials in the present case, and of said Tax Receiver and all other tax officials of the State or County who have had any connection whatever with this cause, amounts to deliberate, intentional and wilful discrimination against the estate of J. B. White; that all of said decedents, the inventories of whose estates were produced as evidence in said cause, were residents of said Richmond County for more than 7 years prior to the dates of their respective deaths.

9. Certified copy of the assessment made by the Board of Equalizers of Richmond County, for the year 1918, upon the property in question. This assessment showed that such Board of Equalizers for that year assessed the same property which the Tax Receiver had assessed for the years 1911 to 1917, for $250,000.

10. An excerpt from the report of John C. Hart, State Tax Commissioner, for the year 1914, from page 15, as follows:

"Equalization is of course, the first consideration, but it can never be accomplished so long as the local boards adopt a certain per centum of valuation in the return of property for taxation. This is the feature I would stress as of greater importance than any other in the enforcement of the tax law; the same standard of valuation of property everywhere for taxation. Where one man returns property at $15.00 per acres, and another returns his land at $5.00 per acre for identically the same class and value, the effect is, the taxation of one man is three times as much as the other and amounts [fol. 329] to nothing more nor less than the rankest discrimination in the distribution of the burden of government. While on the other hand, if the constitutional rule is enforced, of ad valorem taxation of all property, the result would be equality everywhere in the burden of Government."

11. An address made by Henry J. Fulbright, State Tax Commissioner, dated January 1, 1919. This address was directed to all County Tax Officials of the State of Georgia, in which he stated that he had sought to obtain reliable information as to real values, in order that he might compare such values with the returned values as shown by the Tax Digest of several counties of the State; that he accordingly called them to meet him at different points, as convenient, to confer with him as to values; that he adopted country real estate as the basis of computation for the reason that it was only that class of property common to all counties, the quantity of which is shown by the tax books. That he compared such values with the average returned value of each county and found the per cent of the actual value represented by the returned value; that he assumed other property was returned upon about the same basis and computed the real value of all property in the several counties in this way.

"The aggregate amount, as shown by the tax digest of the counties when submitted to me for approval last summer, of all returned and assessed property in the State, is $982,623,580. According to the computation made in the way pointed out above, this represents 32 6/10 per cent of the actual value of the property thus returned for taxes, and a conservative valuation of the property on the tax books, at the present time, is a little more than Three Billion Dollars."

Then went on to state that 96 counties fell below the State average of 32 6/10 per cent; that no one who believed in justice and fairness will oppose some effort of equalizing, and certainly no county below

the average for the State would hesitate, to take the necessary steps to brings its values up to the average. Then followed the general statement of what he sought to do and his reasons for devoting so much time to the work, which was to see that justice was done between all counties. Appended to this report are tables of all the counties in the State, the first of which shows the per acre average of improved lands as shown by the Tax Digest in the first column, and the second column the estimated per acre real value, which per acre average ran from $4.50 to $37.85 per acre, and the estimated real value ran from $7.50 to $100 an acre in some counties. Table [fol. 330] #2 showed the aggregate amount of the digest of each county for the year 1919, with aggregate of the estimated value of the property of the county, and the per cent of real value shown by the return. Table #3 showed the counties which should be increased in order to be equalized, etc.

[fol. 331] 12. There was introduced in evidence by Complainant, certified copies from the Ordinary of Richmond County, showing Inventories of the following estates, and also certified copies of the Tax Returns made by said decedents prior to their death, for the years from 1911 to 1917, inclusive:

Estate of Mrs. Julia C. Langdon

Certified copy of the Inventory of the estate of Mrs. Julia C. Langdon, filed May 19th, 1918, shows that she had in cash at the time of her death..... $36,195.97
Taxable Stocks in various non-resident corporations, of the appraised value of 61,885.00
Taxable bonds of various corporations..... 13,550.00

A certified copy of the tax returns made by Mrs. Julia C. Langdon for the years from 1911 to 1916 inclusive, shows that she returned no stocks or bonds for taxation for either of said years, and that her return of money, debits, notes, accounts, etc., did not exceed $100, for either of said years from 1911 to 1916 inclusive.

Estate of D. B. Printup

Certified copy of Inventory, made 9th of December 1916, showed a return of solvent notes owned by the estate at the time of his death, with various dates extending from 1910 to 1916 of the appraised sound value of.. $23,999.33
Money on deposit in various Banks at the time of his death 13,966.92

Certified copy of tax returns as made by D. B. Printup for the years 1914, 1915, 1916, and by the representative of his estate after his death for the year 1917, showing no money, notes or credits returned by him for the years 1914, 1915 or 1916, but a return

made by the representative of his estate for the year 1917, after his death, of money notes, accounts and credits, of $18,000.

Estate of Mrs. Lizzie M. Fearey

Certified copy of the Inventory of the Estate of Mrs. Lizzie M. Fearey, dated 11th day of October 1918, showing cash on deposit in Bank $4,750.00

Also certified copy of tax returns of Mrs. Lizzie M. Fearey for the years from 1914 to 1917 inclusive, showing a return of no money, notes or creditors for either of said years.

[fol. 332] Estate of Madge Williamson Stearns

Certified copy of Inventory and appraisement of Madge Williamson Stearns, made the 31st of May 1917, showing at the time of her death, taxable stocks in non-resident corporations $6,845
Solvent notes 3,800

Also certified copy of tax-returns of the Administrator of Madge Williamson Stearns' estate showing that she made no return of stocks, bonds or notes or credits for the years 1914, 1915 or 1916, and her administrator after her death in 1917 made a return of stocks and bonds of $3,500, and of money and debts of all kinds, $3,000.

Estate of Mrs. Mary T. Acton

Certified copy of Inventory of the Estate of Mrs. Mary T. Acton, dated 26th day of November 1917, showing solvent notes representing loans on real estate and on stocks and bonds, of $9,325
Cash 700

Also certified copy of tax returns of Mary T. Acton for the years 1914 to 1917 inclusive, showing no return of any money or credits, of any character, for either of the years from 1914 to 1917 inclusive.

Estate of Frederick B. Pope

Certified copy of Inventory of the Estate of Frederick B. Pope on the 13th of December 1917, showing cash on hand $14,004.34
Loans on real estate 35,680.00
Other solvent loans represented by notes 13,888.00

Certified copy of tax returns of Frederick B. Pope for years 1911 to 1916 inclusive, shows for each of said years the return of no money, notes, accounts or credits.

Estate of CHARLES A. CRAWFORD

Certified copy of Inventory of the Estate of Chas. A. Crawford, dated 21st of March 1918, shows solvent loans evidenced by notes $15,165.00
Cash on hand 6,207.14

Certified copy of tax returns of Chas. Crawford for years from 1914 to 1917 inclusive shows return of no money, notes, accounts or debts of any kind for the years 1914, 1915 or 1916 but shows a return of money, notes and credits for 1917 of $2,350.

[fol. 333] Estate of LUCIE W. CASWELL

Certified copy of Inventory of the Estate of Lucie W. Caswell, dated 29th of October 1917 shows solvent notes secured, of $6,500.00
Cash on hand 3,524.71

Certified copy of tax return of Mrs. Lucie W. Caswell for years 1914 to 1917 inclusive, shows return of no money, notes, accounts of credits for either of the years 1914, 1915, 1916 or 1917.

Estate of Mrs. BRIDGET GALLAHER

Certified copy of Inventory of Estate of Mrs. Bridget Gallaher, made the 6th day of May 1915, shows cash on deposit in various banks $10,238
Solvent notes 9,000

Also certified copy of tax returns made by Mrs. Bridget Gallaher for years 1914, 1915 and 1916, shows the return of no money, notes, accounts or other credits for either of the years 1914, 1915 or 1916.

Estate of ROBERT M. STILES

Certified copy of Inventory of the estate of Robert M. Stiles, made 17th day of November 1917, showing solvent notes, (said notes bearing various dates for each of the years from March 3rd, 1911 to December 18th, 1915) ..... $10,020.
Cash in Bank 3,707.38

Also certified copy of tax return made by Robert M. Stiles for years 1914, 1915 and 1916 showing returns of money, debits, debts of all kinds, including notes, accounts, etc. for the year 1914, $350; for the year 1915, $250; for the year 1916, $300, and for the year 1917, $200.

Estate of MOSES C. MURPHY

Certified copy of Inventory of the estate of Moses C. Murphy, dated 1st day of May 1916, shows various and sundry solvent notes

of the appraised value at the time of his death, of $122,451.76. The dates of all of said notes are set forth in detail upon the Inventory and Appraisement and show that all of said notes except four of them, hereinafter mentioned, are dated prior to Jan. 1st, 1911. The four exceptions are as follows:

One note for $7,161.85 dated June 5th, 1913;
One note for $6,300, dated June 11th, 1915;
One note for $200, dated Jan. 14, 1914.

In addition to this there appears notes due by the Board of Commissioners of Richmond County to the deceased, of the appraised value [fol. 334] of $13,104.50, concerning which it might be claimed that these notes, being obligations of the County, were not taxable.

Also certified copy of tax returns made by Moses C. Murphy for the years 1911 to 1916 inclusive, from which it appears that the said Moses C. Murphy, during said years from 1911 to 1916 inclusive, made no returns for either of said years of any money, debts, notes, accounts or choses in action.

Estate of Doctor Franklin Jack

Certified copy of Inventory of the estate of Doctor Franklin Jack, dated the 6th day of February 1918, showing ownership by the deceased at the time of his death, of taxable stocks in non-resident corporations, of the appraised value of..... $262,569.00
Taxable bonds of the appraised value of..... 61,050.00

Accompanying this return was an affidavit of the Ordinary, that an inspection of the tax digest of Richmond County in his office showed that said deceased during his lifetime had made no returns of any property of any character, nor any of said securities, nor any part there, for any of the years 1912, 1913, 1914, 1915, 1916, or 1917.

[fol. 335] 13. An affidavit of James V. Verdery, wherein he swore that he had been a resident and taxpayer of Richmond County for thirty years, and had been familiar with property values in said county for fifteen years, and a member of the Board of Equalizers in said county since 1914, and was such member at its meeting in the summer of 1918, when the securities, money, solvent debts of the estate of J. B. White were before the Board for assessment, and had before it the inventory of the Estate showing the ownership by said estate of securities etc., aggregating approximately $2,000,000; that among said securities were $500,000 worth of bonds in Georgia Corporations and stocks in National Banks located in New York, which they were informed were not taxable in Georgia; that as the Board had understood, the executor of the estate might take the position that the securities were non-taxable; that he, as chairman, obtained an opinion from said Board's advisory counsel, Cumming & Harper, under date of June 18, 1918, which letter is attached to the affidavit,

and which in substance advised the Board that White being domiciled in Richmond County, such property would be taxable there, but in the same letter there was cited the case of Greene vs. Louisville & Interurban Railway Co., 244 U. S., 499, where it was held that it was the duty of the Board not to discriminate against the Estate of White, but to treat said estate in the same manner as other taxpayers of the State and County holding like securities; that after having said letter before it, and discussing the matter with the executor, who appeared before them, said Board assessed such securities in the aggregate sum of $250,000; that under the law, said Board was not only a Board of Assessors, but a Board of Equalizers, and from the best information he could obtain, the assessments so made by said Board for said year on said securities were at a higher rate percentage of the full values thereof than the percentage of the returns of similar classes of property as made by the taxpayers of Georgia bore to the full market value for the year 1918, as well as for the years from 1911 to 1917 inclusive; that it was a fact well known not only to the people generally, but to the executive and tax officials of the State, [fol. 336] and to the members of the General Assembly, that said classes of securities are not generally returned for taxation by the owners thereof, and when returned, are returned generally at a mere nominal percentage of their full value.

14. Also an affidavit of H. K. Lowery, another member of said Board of Three Equalizers, for said Richmond County for said year, in similar language as that of said James P. Verdery.

15. An affidavit of one H. R. De Jarnette, of Putnam County, who swore that he was a member of the Special Tax Commission, appointed by the Governor of the State of Georgia, under an Act of August 20, 1918, and served as such, until the Tax Commission made its report on June 1, 1919; that during the sessions thereof, extending from the Fall of 1918 to the Spring of 1919, he made considerable investigation into the values of various classes of property in Georgia; that where it was possible to get statistics either from the United States Government, Census Departments or other sources, the same was used and made available by said Tax Commission; that it was impossible to obtain any definite or accurate information as to intangible property owned by the taxpayers of Georgia, as no statistics were available; but from the amount of money on deposit in the Banks of the State, after making reasonable deductions, and by adding thereto what seemed to be, from inquiry, the relative ownership of solvent debts as compared with the ownership of actual money by the various classes of people of the State, the conclusion was reached that the actual return of money and solvent debts in the State, disclosed by the Comptroller General's report for 1918, did not represent more than 10% of its fair market value; that deponent and other members of the Commission were confronted with the lack of statistics from any source, showing the aggregate amount of stocks and bonds owned by the taxpayers of Georgia, but from inquiries made of brokers and others, he was of the opinion that the aggregate amount of such property as shown by the Comptroller

General's reports for 1918, did not represent more than 5% of the full aggregate value; that from the best information he could obtain, that comparatively the same low percentage rates of returns of [fol. 337] full values of such property prevailed during the years from 1910 and 1912 down to 1918. Deponent then set out in his affidavit copies of excerpts from the Comptroller General's reports from 1911 to 1918, showing the various amounts of money, solvent debts, and stocks and bonds as appeared to have been returned during the years 1911 to 1918; that from reliable statistics as stated above, there was on deposit in Georgia Banks in 1918 the sum of $380,000,000; that for said year the Comptroller General's report showed a return of only $65,613,596; that from the reasons stated, deponent was of the opinion that said aggregate returns for the State for said years, of money and solvent debts, did not exceed 10% and that the amounts set forth above of stocks and bonds as returned for taxation, did not represent more than 5%; that the conditions above referred to as prevailing in the State were generally known by the people of the State, the executive and tax officials of the State, and members of the General Assembly.

[fol. 338] 16. An affidavit of J. G. Herren, who swore that he — been a resident citizen and taxpayer of Morgan County for more than 47 years, and familiar with property values in said county for more than 40 years, and Chairman of the Morgan County Board of Tax Assessors for five (5) years; and set forth figures taken from the annual reports of the Comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, showing the tax returns as made for said County on the classes of property named, as follows:

Year	Average values of improved lands per acre	Money and solvent debts	Stocks and bonds
1911	$7.60	$372,680	$607
1912	7.50	360,738	400
1913	7.66	326,748	....
1914	7.96	410,970	....
1915	7.96	352,114	....
1916	7.96	391,554	....
1917	8.06	434,813	1,050
1918	9.89	599,240	750

That said returns of farm lands for said County, as appear above, did not, in his opinion, represent more than 20 per cent of the fair average market value of improved lands, with improvements thereon, located in said County for said years; that the aggregate amount of money and solvent debts returned for taxation in said County for said years did not, in his opinion, represent more than 10 per cent of the fair market value of money and solvent debts owned for said years by the taxpayers of said County; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, when any such returns were made at all, in his opinion, did not represent more than 5 per cent of the fair market value of the

taxable stocks and bonds owned by the taxpayers of said County for said years; that it has not been customary for the taxpayers of said County to return stocks and bonds for taxation, and when returned at all, were returned only at a nominal percentage of their fair value; that returns of other classes of property for taxation in said County during said years, were at about the same average percentage of their fair market values; that after 1918 the percentage of values of real estate in said County was considerably increased, owing to [fol. 339] the efforts of the State Tax Commissioner and the County Boards of Tax Assessors, and the returns of lands for the year 1920 were increased to what was supposed to represent approximately — per cent of their fair market value; that said conditions were not peculiar to Morgan County but prevailed throughout all of the adjoining counties throughout the entire middle section of the State, and so far as deponent is advised, prevailed through the State, and said condition was known to the executives and tax officials of the State, and to the members of the Legislature of the State.

A similar affidavit by A. C. Zachry of said County, who stated that he had been a citizen and taxpayer thereof for 33 years, and familiar with property values therein for 25 years.

And another affidavit similar in character, by A. H. Winter, of said County, who stated that he had been a resident thereof for 32 years and familiar with property values for twenty years, and Ordinary for 10 years.

17. P. N. Combs of Wilkes County, Georgia, swore that he had been since 1916, Tax Receiver of Wilkes County, Georgia; had been a resident of said County practically all of his life, and a property owner and taxpayer in said County for more than 25 years and during all of said period had been familiar with property values in said County; then set forth tables taken from the annual reports of the Comptroller General of Georgia, showing the average value of improved lands per acre as returned by the taxpayers of said County for the years 1911 to 1918 inclusive, and the aggregate amount of money and solvent debts as returned for taxation in said County for said years, and also the aggregate value of stocks and bonds as returned for said County for said years, as follows:

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911	$4.74	$416,255	$3,000
1912	4.73	384,260	4,800
1913	4.73	364,405	....
1914	5.75	431,090	....
1915	5.70	337,735	....
1916	5.80	370,085	....
1917	5.84	366,030	400
1918	6.19	492,985	500

[fol. 340] That the first column, showing the average value per acre of improved farm lands, as returned for 1911 to 1917 inclusive,

did not represent more than 20% of the fair market value of said lands, with improvements thereon during said period, and for said years; that the Board of County Tax Assessors were unable to increase the percentage of values of said lands because said low percentage of valuation in returns prevailed not only throughout Wilkes County, but throughout adjoining counties of this section of the State, and, as deponent is advised, throughout the entire State, and the Board of Tax Assessors could not have increased the percentage of values on the returns of said lands without discriminating against the citizens of Wilkes County, and in case any considerable increase had been made in any individual case, the taxpayer had the right to appeal to arbitration, and the arbitrators invariably restored the property to the general average of returns as had prevailed in the County for a long number of years; that after 1917 some increase was made and in 1920, through the efforts of the State Tax Commissioner, in cooperation with the County Tax Assessors, the percentage value of returns of lands was increased considerably to a percentage which was generally accepted as 35% of the fair market value; the amounts of money and solvent debts as returned and as shown on the above statement for said years from 1911 to 1917, did not represent more than 10% of the fair value of said money and solvent debts owned by the taxpayers of said County, and the amounts as shown to have been returned for stocks and bonds did not represent more than 5% of the fair market value of said taxable stocks and bonds owned by the taxpayers of said County; that said condition of returns of low percentage values of said securities was not peculiar to Wilkes County, but prevailed throughout this section of the State, and, as Deponent is advised and informed, prevailed throughout the State, and was known to the tax officials of the State, the executive officer, and to members of the Legislature.

A similar affidavit by F. B. Sims, a resident and taxpayer of said County for 25 years; & member Board of County Tax Assessor for Wilkes Co., for 6 or 7 years; another by Clement E. Sutton, Judge [fol. 341] City Court of said County, and County Attorney for past two years, and a resident thereof all his life; a taxpayer, and familiar with values in said County for 15 years; and one by Frank E. Callaway, a citizen and taxpayer thereof for 20 years, and Clerk of Superior Court and City Court, since 1911, and familiar with property values.

[fol. 342] 18. J. E. Camp of Floyd County, swore that he had been a resident and taxpayer of said County for more than 50 years, and familiar with property values in said County for more than 35 years; that he was at the time of making the affidavit, a member of Floyd County Board of Commissioners of Roads and Revenues and had been for the last two years; he then set forth figures taken from the annual reports of the Comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, showing the tax returns as made for said County on the classes of property named as follows:

Year	Average values of improved lands per acre	Money and solvent debts	Stocks and bonds
1911	$10.97	$1,442,868	$4,800
1912	11.32	1,698,937	6,000
1913	11.50	1,219,502	45,500
1914	11.41	1,299,394	5,500
1915	12.81	2,862,000	....
1916	12.07	1,262,160	....
1917	12.98	1,228,762	....
1918	12.96	1,477,876	....

That said returns of farm lands for said County for the years from 1911 to 1917 inclusive, as appear above, did not, in Deponent's opinion, represent more than 25 per cent. of the fair average market value of improved lands, with improvements thereon, located in said County for said years; that the aggregate amount of money and solvent debts returned for taxation in said County for said years did not, in this opinion, represent more than 10 per cent. of the fair market value of money and solvent debts owned for said years by the taxpayers of said County; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, when any such returns were made at all, in his opinion, did not represent more than 3 per cent. of the fair market value of the taxable stocks and bonds owned by the taxpayers of said County for said years; that it has not been customary for the taxpayers of said County to return stocks and bonds for taxation, and when returned at all, were returned only at a nominal percentage of their fair market value; that returns of other classes of property for taxation in said County during said years, were [fol. 343] at about the same average percentage of their fair market value; that after 1918 the percentage of values of real estate in said County was considerably increased, owing to the efforts of the State Tax Commissioner and the County Board of Tax Assessors, and the returns of lands for the year 1920 were increased to what was supposed to represent approximately 35 per cent of their fair market value; that said conditions were not peculiar to Floyd County, but prevailed throughout all of the adjoining counties throughout the entire northwestern section of the State, and so far as deponent is advised, prevailed throughout the State, and said condition was known to the executives and tax officials of the State, and to the members of the Legislature of the State.

A similar affidavit — Sam L. Graham, who swore that he had been a citizen of said County for 40 years and familiar with property values for 25 years, and was at present Clerk of the Superior Court of Floyd County. And another by J. Zack Salmon, who swore that he had been Tax Receiver of said County from 1915 to 1921, and was familiar with the manner in which taxes are given in.

19. Idus E. Brewer, Clerk Superior Court of Habersham County, swore that he had been a resident citizen and taxpayer of said County for more than 8 years, and has been familiar with propery values in

said County for more than 8 years; that he then set forth figures taken from the annual reports of the Comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, showing the tax returns as made for said County on the classes of property named, as follows:

Year	Average values of improved lands per acre	Money and solvent debts	Stocks and bonds
1911	$4.51	$147,023	$5,100
1912	4.93	155,443	7,700
1913	5.09	152,342	3,100
1914	8.13	150,514	1,250
1915	7.91	165,045	2,000
1916	8.22	157,569	....
1917	8.15	177,077	1,300
1918	8.57	202,820	4,000

That said returns of farm lands for said County for the years from 1911 to 1917 inclusive, as appears above, did not, in his opinion, represent more than 30 per cent. of the fair average market value of [fol. 344] improved lands, with improvements thereon, located in said County for said years; that the aggregate amount of money and solvent debts returned for taxation in said County for said years did not, in his opinion, represent more than 15 per cent. of the fair market value of money and solvent debts owned for said years by the taxpayers of said county; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, when any such returns were made at all, in his opinion, did not represent more than 5 per cent. of the fair market value of the taxable stocks and bonds owned by the taxpayers of said County for said years; that it has not been customary for the taxpayers of said County to return stocks and bonds for taxation, and when returned at all, were returned only at a nominal percentage of their fair value; that returns of other classes of property for taxation in said County during said years, were at about the same average percentage of their fair market values; that after 1918 the percentage of values of real estate in said County was considerably increased, owing to the efforts of the State Tax Commissioner and the County Board of Tax Assessors, and the returns of lands for the year 1920 were increased to what was supposed to represent approximately 50 per cent. of their fair market value; that said conditions were not peculiar to Habersham County, but prevailed throughout all of the adjoining counties throughout the entire northern section of the State, and so far as deponent is advised, prevailed throughout the State, and said condition was known to the executives and tax officials of the State, and to the members of the Legislature of the State.

Another similar affidavit by J. A. Robertson, who swore that he had been a citizen and taxpayer of said county for more than 25 years, and familiar with the property values for more than 15 years, and was then and had been Ordinary of said County for fourteen years; and one by Geo. T. Daniel, J. P. & N. P. of said County, who swore that he had been a citizen and taxpayer of said County for

more than 20 years and familiar with the property values for 15 years, and that he was a practicing attorney in said County.
[fol. 345] 20. W. S. Hubbard swore that he had been a resident citizen and taxpayer of Coweta County for more than 20 years, and familiar with property values in said County for more than 20 years; that he was tax collector for said County for the years 1911 and 1912; that he set forth figures taken from reports of the Comptroller General of the State, showing the returns as made for said County on the classes of property named, as follows:

Year	Average values of improved lands per acre	Money and solvent debts	Stocks and bonds
1911	$6.85	$720,587	....
1912	6.88	663,737	....
1913	6.75	533,309	....
1914	8.58	624,615	$35,000
1915	9.56	588,773	....
1916	9.10	493,876	....
1917	9.29	625,731	1,948
1918	9.31	754,686	....

That said returns of farm lands for said County for the years from 1911 to 1912 inclusive, as appears above, did not, in his opinion, represent more than 30 per cent. of the fair average market value of improved lands, with improvements thereon, located in said County for said years; that the aggregate amount of money and solvent debts returned for taxation in said County for said years did not, in his opinion represent more than 10 per cent. of the fair market value of money and solvent debts owned for said years by the taxpayers of said County; that there were no stocks and bonds returned by the taxpayers of said County for said years 1911 and 1912, and when any such returns were made at all, in his opinion, did not represent more than 5 per cent. of the fair market value of the taxable stocks and bonds owned by the taxpayers of said County for said years; that it has not been customary for the taxpayers of said County to return stocks and bonds for taxation, and when returned at all, were returned only at a nominal percentage of their fair value; that returns of other classes of property for taxation in said County during said years were at about the same average percentage of their fair market value; that after 1918 the percentage of values of real estate in said County was considerably increased, owing to the efforts of the State Tax Commissioner and the County Board of Tax Assessors, and the [fol. 346] returns of lands for the year 1920 were increased to what was supposed to represent approximately — per cent. of their fair market value; that said conditions were not peculiar to Coweta County, but prevailed throughout all of the adjoining counties throughout the entire middle section of the State, and so far as deponent is advised, prevailed throughout the State, and said condition was known to the executives and tax officials of the State and to members of the Legislature of the State.

A similar affidavit by G. E. Parks, one of the Tax Assessors of said County, and B. Paul Smith, Tax Receiver of said County since 1914.

21. Edward F. Lowell, Jr., swore that he had been a resident citizen and taxpayer of Chatham County for more than 25 years, and familiar with property values in said County for more than 10 years; that he had been Chairman, Board of Tax Assessors, City of Savannah since August 15th, 1918; that figures taken from the annual reports of the Comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, showing the tax returns *as* made for said County on the classes of property named, were as follows:

Year	Money and solvent debts	Value of merchandise	Stocks and bonds
1911.....	$2,011,254	$1,891,028	$865,749
1912.....	2,035,093	1,994,437	801,325
1913.....	2,051,010	2,110,504	657,457
1914.....	2,126,272	2,318,604	697,321
1915.....	2,030,531	2,292,197	381,271
1916.....	2,319,948	2,363,389	423,560
1917.....	2,623,993	2,570,641	324,280
1918.....	2,185,820	2,553,408	322,605

That said returns of money and solvent debts for said County for the years from 1911 to 1917, inclusive, did not, in his opinion, represent more than — per cent. of the fair average market value of money and solvent debts, owned for said years by the taxpayers of said County; that said returns of merchandise of said County for the years 1911 to 1917 inclusive, as appear above, would not, in his opinion, represent more than 20 per cent. of the fair average market value of the merchandise owned for said years by the taxpayers of said County; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, in his opinion, would not [fol. 347] represent more than 5 per cent. of the fair market value of all the taxable stocks and bonds owned by the taxpayers of said County for said years; that it had not been customary for taxpayers in said County to return stocks and bonds for taxation, and when returned at all, they were returned only at a nominal percentage of their fair value; that the returns of other classes of property for taxation in said County, except improved real estate and bank stock during said years were at about the same average percentage of their fair market value in his opinion; that said conditions were not peculiar to said County, but prevailed so far as deponent was advised throughout the State, and said conditions were known to the State executives and tax officials of the State and to the members of the Legislature of the State.

A similar affidavit by A. B. Moore, Jr., Clerk of the County Board of Assessors from 1914 to 1917, and for 2 years a member thereof; and one by W. D. Graham, Clerk of the Superior Court of Chatham County for 11 years.

22. An affidavit of J. Frank Carswell, who swore that he had been a resident citizen and taxpayer of Richmond County for more than 15 years, and was familiar with property values in said County for more than 10 years; that he was City Tax Assessor of personalty for the City of Augusta for the years 1913, 1914 and 1915; that he set forth figures taken from annual reports of the Comptroller General of Georgia for the years 1911 to 1918 inclusive, showing tax returns as made for said County on the classes of property named as follows:

Year	Money and solvent debts	Merchandise	Stocks and bonds
1911	$1,899,678	$2,342,250	$139,880
1912	1,879,800	1,879,800	120,315
1913	1,972,475	2,552,340	124,500
1914	1,922,744	2,502,946	190,550
1915	2,064,708	2,472,714	186,132
1916	2,037,507	2,599,620	187,970
1917	2,451,672	2,910,359	154,320
1918	2,885,027	3,521,293	482,480

That said returns of money and solvent debts for said County for the years from 1911 to 1917, inclusive, did not, in his opinion, represent more than 10 per cent. of the fair average market value of money and solvent debts, owned for said years by the taxpayers of said County; [fol. 348] that said returns of merchandise of said County as appear above, would not, in his opinion, represent more than 20 per cent. of the fair average market value of the merchandise owned for said years by the taxpayers of said County; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, in his opinion, would not represent more than 5 per cent. of the fair market value of all the taxable stocks and bonds owned by the taxpayers of said County for said years; that it had not been customary for taxpayers in said County to return stocks and bonds for taxation, and when returned at all, they were returned only at a nominal percentage of their fair value; that the returns of others classes of property for taxation in said County, except improved real estate and bank stock during said years were at about the same average percentage of their fair market value in his opinion; that said conditions were not peculiar to said County, but prevailed so far as deponent was advised throughout the State, and said conditions were known to the State executives and tax officials of the State and to the members of the Legislature of the State.

23. Edward B. Harrold swore that he had been a resident citizen and taxpayer of Bibb County for more than 10 years, and had been familiar with property values in said County for more than 10 years; that he was Chairman Bibb County Tax Equalizers for 6 years; and Chairman then of City of Macon Tax Board; that he set out figures taken from the annual reports of the comptroller General of the State of Georgia for the years from 1911 to 1918 inclusive, showing the tax returns as made for said County on the classes of property named as follows:

Year	Money and solvent debts	Value of merchandise	Stocks and bonds
1911.....	$1,242,150	$2,250,080	$84,800
1912.....	1,068,555	2,542,290	106,275
1913.....	1,143,740	2,538,150	105,765
1914.....	2,935,605	2,830,540	110,915
1915.....	2,764,195	2,433,000	74,375
1916.....	1,770,225	2,311,390	12,050
1917.....	1,692,310	2,392,195	22,250
1918.....	1,601,630	2,725,275	18,100

That said returns of money and solvent debts for said County for the years from 1911 to 1917 inclusive, did not, in his opinion, represent [fol. 349] more than 10 per cent. of the fair average market value of money and solvent debts, owned for said years by the taxpayers of said County; that said returns of merchandise of said County for the years 1911 to 1917 inclusive, as appear above, would not, in his opinion, represent more than 40 per cent. of the fair average market value of the merchandise owned for said years by the taxpayers of said County; that the amount of stocks and bonds as returned by the taxpayers of said County for said years, in his opinion, would not represent more than 5 per cent. of the fair market value of all the taxable stocks and bonds owned by the taxpayers of said County for said years; that it had not been customary for taxpayers in said County to return stocks and bonds for taxation, and when returned at all, they were returned only at a nominal percentage of their fair value; that the returns of other classes of property for taxation in said County, except improved real estate and bank stock during said years were at about the same average percentage of their fair market value, in his opinion; that said conditions were not peculiar to said County, but prevailed so far as deponent was advised throughout the State, and said conditions were known to the State executives and tax officials of the State and to the members of the Legislature of the State.

A similar affidavit by W. K. Young of said County, who stated that he had been a resident for 33 years, and familiar with property values for 25 years, had been bookkeeper to the Tax Receiver, Assistant Tax Receiver for 10 years; and another by Morris Harris, Tax Assess- of the City of Macon.

24. W. W. Hardaway, swore that he had been a resident cetizen and taxpayer of McDuffie County for 20 years, and familiar with property values in said County for 15 years, and Clerk of the Superior Court of said County since 1909; that he set forth returns for taxation in said County for the years 1911 to 1918 inclusive, as taken from the annual reports of the Comptroller General of said State for said years, as follows:

350

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911.....	$3.95	$117,535	$2,000
1912.....	4.50	97,007	2,000
1913.....	4.54	90,650	4,000
1914.....	5.19	79,508	2,000
1915.....	5.19	78,101	....
1916.....	5.15	71,279	....
1917.....	5.12	79,582	....
1918.....	6.82	145,823	....

That the average values of improved lands, including the improvements thereon as made for said County for the years from 1911 to 191 inclusive, as set forth above, do not represent more than 30 per cent of the fair market values of improved lands, with improvements thereon, in said County for said years; that after 1917, some increase was made in the percentage of values of lands as returned, and in 1920, through the appeals and efforts of the State Tax Commissioner, aided by the County Board of Tax Assessors, the percentage values of said lands as returned were considerably increased, the value per acre amounting to approximately $9 or $10 per acre, which was understood to represent approximately 35% of the then market value of said lands; that the aggregate returns of money and solvent debts made in said County for the years 1911 to 1917 inclusive, did not represent more than 10 per cent of the fair value of said money and solvent debts, and the returns of stocks and bonds in said County for the years when such property was returned at all, did not represent more than 5 per cent of their fair market value; that said percentages of fair market value as made in the tax returns, fairly represented the percentages of fair market values as to other classes of property returned in said County for said years, and the same condition prevailed in adjoining counties throughout this section of the State, and, as deponent was advised, throughout the entire State, and was well known to all of the people, tax officials, legislators, and the Executive Department of the Government.

A similar affidavit of G. W. Lokey, Ordinary of said County and in charge of County affairs since 1912; and another by W. A. Watson, Tax Collector of said County since 1912.

25. An affidavit of A. M. Marshall, who swore that he had been a resident, citizen and taxpayer of Putnam County for more than [fol. 351] 30 years, and familiar with property values in said County for more than 30 years, and Tax Collector of said County and had held said office for more than seven years; that he set forth figures taken from the annual reports of the Comptroller General of the State, for 1911 to 1918 inclusive, showing tax returns as made in said County for said years and for said classes of property, as follows:

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911.....	$6.08	$241,262	....
1912.....	6.07	238,170	....
1913.....	6.47	211,652	....
1914.....	7.08	234,277	....
1915.....	6.81	193,721	....
1916.....	6.77	219,225	....
1917.....	6.77	230,052	....
1918.....	6.86	300,402	....

That said returns of farm lands as made for said County for the years from 1911 to 1917, as appear above, did not represent more than 50 per cent of the average fair market value of said lands in said County for said years; that the aggregate amount of money and solvent debts shown by said tables to have been returned in said County for said years, did not, in his opinion, represent more than 10 per cent of the fair market value of money and solvent debts owned for said years by the taxpayers of said County; that it appears from said table taken from said reports that no returns were made of any stocks and bonds by the taxpayers of said County for the years 1911 to 1918 inclusive; that to the best of deponent's knowledge and belief there were taxable stocks and bonds owned by taxpayers of said County for said years, but that under the general belief and understanding on the part of said taxpayers that said class of property was not generally returned in the State, nor required to be returned for taxation, no returns were made thereon; that the returns of other classes of property for taxation in said County during said years were at about the same average percentage of the market values of said classes of property; that after 1918 the percentage of the values of real estate in said County was considerably increased, owing to the efforts of the State Tax Commissioner and the County Board of Tax [fol. 352] Assessors, and the returns of lands for the year 1920 amounted to approximately $8.00 per acre, which was supposed to represent 40 per cent of its fair market value; that said conditions were not peculiar to Putnam County, but prevailed throughout all of the adjoining Counties and throughout this entire section of the State, and, so far as deponent was advised, prevailed throughout the State, and said condition was known to the tax officials of the State, and to the executive officers of the State.

A similar affidavit by C. D. Leonard, Jr., who stated that he had been a citizen of said County for 45 years and familiar with values for 30 years, and had been a member and Chairman of the Board of Tax Assessors of said County for several years. And another of T. O. Walker, Clerk of the Superior Court of said County.

26. Affidavit of H. D. Glanton, who swore that he had been a resident, citizen and taxpayer of Troupe County for more than 25 years, and familiar with property values in said county for more than 20 years; that he set forth figures from the annual reports of

the Comptroller General of the State of Georgia for the years 1911 to 1918 inclusive, showing the tax returns as made for said County on the classes of property named, as follows:

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911.....	$5.46	$285,356	$32,700
1912.....	5.39	230,254	48,000
1913.....	5.84	237,618	26,500
1914.....	6.72	274,120	26,500
1915.....	6.18	207,303	9,422
1916.....	7.01	187,158	2,750
1917.....	7.11	263,157	2,250
1918.....	7.68	374,775	5,300

Then stated that from said table, in his opinion the returns of farm lands for said County for said years, did not represent more than 30 per cent of the fair average market value; that the aggregate amount of money and solvent debts returned for taxation, did not exceed more than 10 per cent, and stocks and bonds did not exceed more than 5 per cent; that since 1918 the percentage of values of real estate in said County were considerably increased, owing to the efforts of the State Tax Commissioners and the County Board of Tax Assessors, and the returns of lands for the year 1920 were increased to what was supposed to represent approximately 33 1/3 per cent of [fol. 353] their fair market value; that said conditions were not peculiar to Troupe County but prevailed throughout all of the a-joining counties throughout the entire middle section of the State, and so far as deponent was advised, prevailed throughout the State, and said conditions were known to the executives and tax officials of the State and to the members of the Legislature.

A similar affidavit by T. J. Thornton and H. C. Butler of said County, City Tax Assessor of City of La Grange for 18 years.

27. An affidavit of John Lampkin, of Columbia County, who stated that he had been a taxpayer of said county for more than 20 years, and familiar with property values for 15 years, and a member of the County Board of Tax Assessor for said County since 1914. In his affidavit he copied excerpts from the Comptroller General's reports, as follows:

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911.....	$4.78	$49,167	$200
1912.....	4.84	51,245	
1913.....	4.89	62,494	
1914.....	5.36	89,394	
1915.....	5.46	97,316	
1916.....	5.61	85,600	
1917.....	5.90	77,573	
1918.....	5.91	94,308	

From said table the average value of farm lands did not exceed 25 per cent, and of money and solvent debts, did not exceed 10 per cent, and stocks and bonds did not exceed 5 per cent; that after 1918, through the efforts of the State Tax Commissioner and the County Board of Tax Assessors, real estate values had been increased to an amount which was supposed to represent 35% of its fair market value; and that in his opinion such conditions were not peculiar to Columbia County, but prevailed throughout the eastern section of the State, and so far as deponent was advised prevailed throughout the State, and was known to the tax officials of the State and the legislative officers of the State.

A similar affidavit from P. B. Mundy, who stated he had been a resident of said County for 30 years and ordinary, and in charge of [fol. 354] County affairs from 1911 to 1921, and since then Chairman of the Board of County Commissioners.

28. An affidavit of Jesse C. Palmer, who swore that he had been a taxpayer of Burke County for a number of years, and since 1917 Tax Collector thereof, and prior thereto, was an officer in the First National Bank of Waynesboro; that he was fairly familiar with property values in said County for years 1911 to 1917 inclusive, and set out therein figures taken from the Comptroller General's Reports, for the years mentioned, as follows:

Year	Average value of improved lands per acre	Money and solvent debts	Stocks and bonds
1911.....	$2.77	$210,188	$5,985
1912.....	2.80	203,180	8,550
1913.....	2.81	176,588	2,000
1914.....	3.75	301,785	20,960
1915.....	3.92	233,390	16,835
1916.....	3.96	208,657	15,135
1917.....	4.92	302,907	19,473
1918.....	6.04	501,570	200

That in his opinion, the average value per acre for land did not represent more than 20% of the fair market value of such lands during said years, and that the average value of money and solvent debts did not represent more than 10% of the fair market value of such property owned by the taxpayers of said County during said years, and the column of stocks and bonds returned, did not represent as much as 5% of the taxable stocks and bonds actually owned by the taxpayers of said County for said years; that through the efforts of the State Tax Commissioner aided by the Board of County Assessors, considerable increase was made in the returns of land values, and some increase in the returns of money and solvent debts in the County for 1918, and a considerable increase was made in land values in 1920, but from 1911 to 1917, the percentage of the fair market values, as stated above, and as actually returned and assessed for taxation in said County, did not exceed the percentages as stated above.

29. And affidavit of G. W. Graham of said Burke County, who swore that he was from 1910 to 1916, tax receiver of said County, and under the law received returns from taxpayers of their prop- [fol. 355] erty, and entered the same on the tax digest, which when completed, was made in three copies, one of which was delivered to the Tax Collector, one to the Ordinary, and one to the Comptroller Genera-; that during said period he was fairly familiar with property values in said County, and then proceeded to set out the same table taken from the Comptroller General's report as that set out above in the affidavit of Jesse C. Palmer, and then stated that in his opinion the average value of returns on lands as set out in said table did not represent more than 20% of the fair maket value of the improved lands, including improvements, in said County during said years, and the aggregate returns of money and solvent debts did not represent more than 10% of the fair market value of money and solvent debts owned by the taxpayers of said County for said years, and the returns of stocks and bonds as shown in said table did not represent more than 5% of that character of property; that prior to the establishment of the County Board of Tax Assessors and Equalizers in 1914, he did all in his power to have the percentage values of property increased, but was unable to do so to any extent; that if he, as Tax Receiver had assessed such property at anything like its full value, or half value, or 33⅓%, his assessments would have been met with demands for arbitration, in every instance, and the arbitrators would have restored the property to the usual price per acre at which it was returned; or, of other character of property, would have in like manner reduced the assessment to the general low average as returned in the County; that after 1914, the County Board of Assessors and Equalizers made efforts to increase the percentage of values and had little more success than he had had as Tax Receiver; that said condition was not confined to Burke County, but existed throughout the eastern section of the State, and so far as he was advised, existed throughout the entire State, and so far as he was informed such condition was known to all the tax officials of the State, to the executive and legislative departments of the State.

30. Another affidavit of William H. Davis, of said County, who stated that he had been a resident of said County (Burke) for 35 [fol. 356] years, and for the past 10 or 12 years had been Judge of the City Court of Waynesboro, for said County; that during all of said period and especially during the past 20 years, he had been fairly familiar with property values in said County; and he then proceeded to copy the same table as taken from the Comptroller General's report, and set out in the affidavit of Jesse C. Palmer above, and stated that during the years 1911 to 1917, for which said returns and assessments were made, farm lands in Burke County with the buildings and improvements thereon, which are included in such lists, sold from $10 and $15 to $20 per acre, and said returns per acre, as the same were made to the Tax Receiver of Burke County, and as the same were finally assessed after 1914 for taxa-

tion, as the same appear upon the Comptroller General's reports for said years, as set forth in said table, did not, represent more than 20% of the fair average value of said lands for said years; that the second column, which set forth money and solvent debts, did not represent more than 10% of the fair market value of the money and solvent debts owned by the taxpayers of said county for said years; and that the third column under the head of stocks and bonds, set forth, did not represent more than 5% of the fair market value of taxable stocks and bonds owned by the taxpayers of said County for some of the years, and for other years does not represent that much, as such returns of stocks and bonds, when made a- all, were merely a nominal percentage of the actual value; that such condition was not peculiar to Burke County, but existed throughout that entire section of the State, and so far as deponent was advised, throughout the entire State, and that such condition was well recognized by all the taxing officials of the State, as well as the executive and legislative officer; that after 1917, the State taxing officials made efforts to have the property values increased, and while for said year the land values was to some extent increased, and the return of money and solvent debts increased, apparently the returns of stocks and bonds for the entire County amounted to only $200, no effort having been made to get that class of property on the tax books, or to increase its valuation.

[fol. 357] 31. An Affidavit of E. E. Chance of said Burke County, who stated that he had been a resident thereof all of his life, and a taxpayer in said County for the past 30 years, and had been a member of the County Board of Tax Assessors for Burke County since 1914 down to 1920; he then proceeded to set out the same table taken from the Comptroller General's reports, as copied above in the affidavit of Jesse C. Palmer, and then stated, that from his knowledge of the value of land in said County for said years, in the table set forth above, did not represent more than 20% of the fair average values of said lands, and the aggregate amount of returns of money and solvent debts, did not represent more than 10% of the fair average value of said money and solvent debts, and the amount as returned for said years set forth under the head of stocks and bonds, did not represents more than 5% of the fair average value of stocks and bonds owned in said County during said years; that while deponent was a member of the Tax Board of Assessors and Equalizers for said County from 1914 to 1920, said Board made every effort in its power to get the property of the taxpayers in said County increased to a higher percentage of its real value, as the gradual increase of returns of farming lands per acre, as shown by the said table set out above, would demonstrate; that said Boards were charged with the duty of equalizing the property values in the County between the taxpayers, as much as possible, and if said Board had largely increased said values, they would have met with arbitration, under the Tax Equalization Act, which would have reduced the lands to the low percentage value as they appear above; that considerable increase in percentage values of lands was made in

1918, and finally after an effort on the part of the State Tax Commissioner, said lands were raised in 1920 until they reached about 33⅓% of their fair market value; that while the Board endeavored to get an increase on the percentage of returns of money and solvent debts under the taxing system prevailing in said County and in the State, it was impossible to do so; that neither the tax officials of the County, nor the Tax Board of Assessors were ever *above* to [fol. 358] get more than a nominal percentage of the values of taxable stocks and bonds owned by taxpayers of the County, returned; and to the best information of this deponent, the same condition that exists in Burke County with reference to low returns and assessments of similar property for taxation, prevailed not only in the eastern section of the State, but throughout the State.

32. Another affidavit of W. M. Fulcher, of Burke County, who stated that he had been resident of said County all of his life, and that from 1910 to 1917, he was Clerk of the Superior Court of Burke County, and of the City Court for said County, and during said period he was fairly familiar with the market values of properties located in said County; who also copied in his affidavit the table taken from the Comptroller General's reports, as set out in the affidavit of Jesse C. Palmer above, and then stated that from said table, in his opinion the average value of real estate, did not exceed more than 20% of its fair market value, and the aggregate amount of money and solvent debts did not exceed 10%, if that much, of the fair market value of the money and solvent debts owned by taxpayers of said County, and the amount set forth under the head of stocks and bonds, being the entire amounts returned for taxation during said years, is less than 5% of the fair market value of such securities; that from deponent's best information, said condition was not confined to Burke County, but was general throughout the State.

33. Affidavit of E. H. Callaway, dated April 22, 1922, in which he stated that he had examined books of inventories kept in the office of the Ordinary of Richmond County, showing appraisements and inventories of estates of deceased residents of Richmond County, administered in said County from 1913 to 1918, and took therefrom figures from estates which exceeded $10,000, and tabulated from said inventories only reported cash in banks, solvent and secured notes, taxable stocks and bonds in non-resident corporations, and thus tabulated figures from 66 estates during said years, and found the aggregate amount of cash in banks, solvent and secured notes, taxable stocks and bonds in non-resident corporations to be [fol. 359] $1,579,122, in which was not included the Estate of J. B. White; that he also tabulated cash in banks, solvent and secured notes, taxable stocks and bonds in non-resident corporations of 18 estates, not including the Estate of White, which showed an aggregate amount of $1,180,489; the property of which the 18 estates consisted being classified as follows:

Stocks in non-resident corporations	$121,943
Taxable Bonds	191,690
Solvent and Secure Notes	323,648
Cash in Bank	243,208

that most of said decedents had been residents, citizens and taxpayers of Richmond County, either all of their lives, or for a long number of years prior to their death; that to the best of his knowledge and belief all had been residents, citizens and taxpayers of Richmond County for a number of years prior to their respective deaths; that since 1919 he had made a personal inspection of the tax digest of Richmond County from 1910 to 1918, inclusive, as to the amount of stocks and bonds, money and notes and credits returned for taxation by each of said 18 decedents, which had been examined by him, did not return in the aggregate in any given year, as much as $25,000, of such character of property as that listed above; that the information obtained in deponent's affidavit as Exhibit "G," in the testimony introduced before the arbitrators in September, 1919, was read at the hearing of C. A. Steed, Tax Receiver, and counsel then, and now, representing the State of Georgia and Richmond County in the present tax proceeding, and notwithstanding said information, no proceedings whatever had been instituted against any of said estate for the purpose of collecting back taxes on said property, by either the Tax Receiver or said attorneys.

[fol. 360] IN UNITED STATES DISTRICT COURT

STIPULATION BETWEEN COUNSEL FOR ABATEMENT OF CERTAIN ASSESSMENTS

"It is hereby stipulated between Counsel for Complainant and defendants in the above stated cause, that the following amounts of the assessments in said cause shall be abated, and the taxes based thereon in said tax fi. fas. shall be enjoined, conditioned upon the Court holding that the motion to dismiss should not prevail and that it has jurisdiction, to wit:

1. The valuation placed upon the National Bank stocks in amount of assessments as follows:

For 1911	$62,000
" 1912	61,675
" 1913	61,560
" 1914	57,020
" 1915	61,780
" 1916	65,725
" 1917	99,150

2. The value of 105 shares of stock in Southwestern Railway Company of Georgia, included in the assessments and in said tax fi. fas. for 1917, amount, $10,500.

3. Error in excess of alleged full valuation in assessment for 1913, $212,395.

4. Error in excess of alleged full valuation in assessment for 1917, $53,006.83.

It is also stipulated and agreed that all of the exhibits attached to the amendment of complainant in this cause allowed on September 21st, 1922, setting forth full copies of the record in the case of State of Georgia vs. E. H. Callaway, Executor, known as the Injunction suit, and all of said exhibits setting forth full copies of the record in the case of State of Georgia, vs. E. H. Callaway, Executor of J. B. White, known as the Equitable Petition to set aside the award of the arbitrators, and enjoin the enforcement thereof, are hereby accepted and agreed to be true and correct copies of the record in said causes, and no further proof of the authenticity thereof is required to be made."

[fol. 361] Respondents in the lower court, appellants herein, introduced the following evidence:

1. Executions and assessments made by the Tax Receiver, which had already been introduced by complainant, appellee, and hereinabove set out, and to avoid duplication, the same is omitted here.

2. Written assents from Callaway, Executor, to the residuary legatees and trustees under the Will of J. B. White, to all real estate, passing thereunder, which was dated a year or more prior to the filing of this bill.

3. Depositions of J. B. Clews, a member of the firm of Henry Clews & Company, Bankers of New York, which depositions were those allowed to be taken by the Court in the mandamus proceedings referred to in this record, and which were submitted to said C. A. Steed, Tax Receiver of Richmond County, and considered by him in making the assessments complained of, as follows:

I am a member of the firm of Henry Clews & Company, Bankers. No relationship existed between my firm and Mr. James Brice White, except that Mr. White maintained an account with us. According to our ledger, we had on hand on January 1, 1911, the following securities. Then follows the list set forth in Exhibit "A" attached to the affidavit of Marion H. McPherson and Robert W. Dougal, (which affidavit was introduced by complainant and set out hereinabove in this transcript).

Witness continuing said: On January 31, 1911, we had the same securities. Against these securities Mr. White owed us on Jan. 31st, 1911, $480,635.85, and on February 1st, 1911 he owed us against these securities, $484,052.33; On January 31, 1912, Mr. White had on hand with us the securities listed on the memorandum attached to this deposition, marked Exhibit "A" (which is the same list as above set out).

Witness continuing said: If our books showed that we had these securities on January 31, 1912, we would of course have them on

[fol. 362] the morning of February 1st, 1912, unless of course they went out on the credit side. In answer to the question as to what securities the witness' firm had on hand on January 1st, 1913, Jan. 1, 1914, Jan. 1, 1915, Jan. 1, 1916 and Jan. 1, 1917, the witness stated that the memorandum attached to his testimony marked Exhibit "A" shows what securities the firm of Henry Clews & Company, had on hand for Mr. White on these dates, the list being the same as set forth as Exhibit "A" attached to the affidavit of McPherson and Dougal (all of which is above set out). Continuing further, he said, my firm had a settlement with the executor of J. B. White and I think I probably have a copy of the receipt passing between my firm and the executor. The letter "m" after certain items in the list of securities, wherever it occurs, means "thousands." The credit item on the statement dated January 1, 1917, of $8,367.17 shows that Mr. White had paid us in full all that he owed us and that there was a balance due him of that amount at that time, and we had on hand as his property Jan. 1, 1917, the property set opposite that item. We have been doing this character of business for Mr. White for the last ten years or more. What I mean by stating that we had the securities on the date mentioned unless they went out, was that unless they were sold in the meantime. If they had not been sold they would be on hand. Mr. White opened his accou-t with us when he was in this country. He then went abroad and gave us the address: "c/ The American Express Co., 6 Haymarket St., London, Eng." Later, in 1912, he gave us the address: "45 Arthur Street, Belfast, Ireland." He moved around at different places on the other side. I think he finally died in Italy. You will notice in our ledger transcript that under date, February 1st, 1911, there was a balance of $478,877.33. This means that Mr. White owed that amount to us, and that subsequently this was paid up and that under date of Jan. 1st, 1917, the account had a credit of $8,367.70. It is proper to state in this connection that this was to a large extent brought about by cash remittances from Augusta, Georgia. That is, on February [fol. 363] 4th, 1911 we received from the National Bank of Augusta $32,010.88. On July 19th, the same year, from the same bank, $40,000; on January 31, 1911 from the Planters Loan & Savings Bank, $36,000; on Jan. 29, 1912, from the same institution, $34,000; on May 22, 1912, from the same institution, $12,000; on Jan. 8, 1913, from the same institution, $52,000; on Jan. 4, 1913 from the same institution, $12,000; on Oct. 9, 1913, from the said institution, $20,000; on March 4, 1914 from the same institution, $15,000; on August 28, 1914, from the same institution, $20,000; on March 24, 1915, from the same institution, $25,000; on August 19, 1915, from the same institution, $25,000; on Jan. 26, 1916, from the same institution, $25,000; on Feb. 28, 1916, from the same institution, $15,000; and on September 4, 1917, from the same institution, $35,000. Exhibit "A" attached to my interrogatories (which is the same as Exhibit "A" in the affidavit of McPherson and Dougal except the column of valuations) correctly shows the condition of the account of Mr. White on the several dates mentioned, and the

property in our hands on these respective dates belonging to Mr. White. There is nothing there to indicate the par value of the stocks or bonds. The par value of Reading was $50 per share; the par values of the following was $100 per share; Northern Pacific; Southern Pacific; Louisville & Nashville; Great Northern, preferred; Baltimore & Ohio; Union Pacific; Union Pacific, preferred; Atlantic Coast Line; Norfolk & Western; Virginia-Chemical Co., pref.; Atchison, Topeka & Santa Fe; National Park Bank; National Bank of Commerce; Ontario & Western; Southern Railway, pref., and Rock Island Company of New Jersey. Indeed the par value of all stocks mentioned in the attached accounts is $100 a share except Reading, which is $50 a share. I have not found the receipt between our firm and the executor. I have no such receipt. As the account was an open one and the securities were not taken out of our possession, there was no occasion for the executor to give us a receipt.

[fol. 364] 4. Respondents also relied upon and re-introduced in evidence the joint affidavit of Marion H. McPherson and Robert W. Dougal, a copy of which is attached to the affidavit of E. H. Callaway, Executor, as Exhibit No. "1," and introduced by him, and already included in this abstract of evidence hereinabove, on page —, and in order to avoid duplication, the same will not be repeated here.

5. Marcus S. Baker, Tax Receiver of Chatham County, swore that since his incumbency of such office, he had sought to carry out as far as lay in his power, instructions of the Comptroller General, touching the collection of taxes on all classes of property; that wherever it had come to his knowledge that there was intangible personal property owned by taxpayers of his county, which had not been returned for taxes, he had proceeded to assess the same as required by law; that only recently there had been collected in Chatham County a large amount of taxes from the estates of decedents, who had failed to make proper returns during their lives, which information was obtained from the appraisements filed in the Ordinary's Office touching the collection of inheritance taxes, and when this came to light such property was assessed for back taxes as required by law, which property included intangible securities such as stocks and bonds in foreign corporations; that he knew of no systematic, uniform custom prevailing among the Tax Receivers of said State, whereby they assessed property at any uniform percentage of its value.

6. C. A. Steed, Tax Receiver of Richmond County, swore that he had been Tax Receiver of said county for fifteen years, and since his incumbency of such office he had always sought to carry out the instructions of the Comptroller General with reference to assessing personal property, such as stocks and bonds in foreign corporations, at their fair market value, so far as it had been within his power to do so; that he had no personal knowledge of any such personal property, or the owners thereof, which had been withheld from taxation by any individual taxpayer, nor had he any information of such

during the years 1911 to 1917 inclusive; that where such informa-[fol. 365] tion had been furnished him he had required a return for the purpose of taxation as he had done in the White matter, and wherever property had been returned to him as being worth, say $10,000, he would assess the same at that figure; that he had exhibited to him a copy of the affidavit of E. H. Callaway, dated September 18 1922, offered in evidence in this case, and that no information had been furnished him touching the amount of property which was left as having been owned by the estates of Moses C. Murphy, Mrs. Julia C. Langdon, David B. Printup, Mrs. Bridget Gallaher, Mrs. Lizzie M. Fearey, Chas. A. Crawford, Robert M. Styles, Mrs. Lucy W. Carswell, Mrs. Mary T. Acton, Fred B. Pope, Doctor Franklin Jack, or Mrs. Madge Williamson Stearns, which would authorize him to require a return of such property for any previous years; that he had not been furnished with any information touching the character of such property, when the same was purchased or owned by said various parties, and for all deponent knew, none of said property was owned by said parties on the taxable dates for the years 1911 to 1917 inclusive; that if he had been furnished with evidence which would have satisfied him of the ownership and the kind of property owned by said persons, or any other persons on the taxable dates, and the value thereof for any seven years back, he would have required a return thereof as was done in the assessment of the property of the Estate of J. B. White; that it was only after he had been convinced of the ownership of the property of said White, the character thereof, and the value thereof on the taxable dates in question for the years 1911 to 1917, did he act against said estate, in fact, he did not act until after a mandamus was instituted, and he furnished with evidence of the ownership and value on the taxable dates for the years 1911 to 1917 inclusive, and after having had submitted to him sworn evidence of the ownership and value of such property, which was not disputed, he then assessed the property in question against E. H. Callaway, as Executor of J. B. White, and would do the same against any other estate, or the owners of such property, where he had furnished him such information as was furnished him in that instance; that he is not the keeper of records of [fol. 366] the Court of Ordinary, in which are filed inventories and apprais-ments of the various estates of parties who die in Richmond County, and had no occasion to check them over, or to audit them in any way, and deponent states that the only information he had as to the ownership of any property referred to in the affidavit of said Callaway, came exclusively from such affidavit submitted to him on this date; that he had seen the affidavit of said Callaway, of August 23, 1919, in which he referred to various estates which had been administered in the Court of Ordinary of said County, but no specific information was contained therein, nor had been brought to deponent's attention as to the ownership of said property, nor whether the same was owned by the parties on the taxable dates for the years in question, nor did the same contain any names whatsoever of such ownership. Deponent further says that if the said Callaway had produced to him such character of evidence of the ownership and

value of any taxable property on the taxable dates for any previous years as was furnished him in the assessment of the property of White, he would proceed in the same manner as he did therein; that he had not uniformly, systematically discriminated against the Estate of J. B. White, but had treated said estate and the executor thereof in the same manner as he would treat any other executor with like information before him.

7. M. C. B. Holley swore that he was the Chairman of the Board of Commissioners of Roads and Revenues of Richmond County, which had control of the fiscal affairs of said County; that he had had exhibited to him certain summaries of the estates of Moses C. Murphy, Mrs. Julia C. Langdon, David B. Printup, Mrs. Bridget Gallaher, Mrs. Lizzie M. Fearey, Chas. S. Crawford, Robert M. Styles, Mrs. Lucy W. Carswell, Mrs. Mary T. Acton, Fred B. Pope, Doctor Franklin Jack, and Mrs. Madge Williamson Stearns, and that such information is the first that ever came to his attention, and he did not know whether the same was true or not, or whether the property in question referred to therein was owned by the various parties on the taxable dates of said years or not, or whether or not taxes had not been paid thereon for the years in question; that if there were [fol. 367] furnished it, such information as was furnished it touching the taxation of the property of the Estate of White, that he would instruct the Tax Receiver of said County to proceed to assess such property for back taxes in the same manner as was done in the White Tax Case; that none of the estates above referred to represent anything like the amount of property as was owned by the Estate of J. B. White; and that the information touching the White estate was, that White was a multi-millionaire worth some $3,000,000 or more, and that his tax returns for the years 1911 to 1917 showed a return of only $300 worth of household and kitchen furniture, and when he died it developed that he had some million and a half dollors worth of stocks and bonds in foreign corporations on deposit with the banking firm of Henry Clews & Company of New York City, and when such information was presented to said Board, it thereupon employed Pierce Bros., as its attorneys for the purpose of enforcing taxes against said enormous amount of taxable property which had paid no taxes to Richmond County, the State of Georgia, or the Board of Education of Richmond County; that if such information were produced to the present Board, it would act in the same manner as it acted in said instance; that the County employed Pierce Brothers for the purpose of litigation in this case, and that they were not employed as any tax ferreters, and they would have no authority in the name of the County to institute any suit for the enforcement of the collection, unless employed for such specific purpose.

8. Benjamin E. Pierce swore that he was of counsel for respondents, and had been representing said taxing authorities since the beginning of the J. B. White Tax litigation, and had read the affidavit of E. H. Callaway dated September 18, 1922, and denied as stated therein "that said conduct on the part of said attorneys repre-

senting said tax officials in the present case, of said Tax Receiver and of all other tax officials of the State or County who have any connection whatever with this cause, amounts to deliberate, inten-
[fol. 368] tional and wilful discrimination against the Estate of J. B. White"; that he had no information touching the estates referred to in the affidavit of said Callaway, except that as shown by said affidavit and by the claimed summaries of the estates referred to in said affidavit; that he had no authority in tax matters generally; that his firm had been given no "roving commission" to collect taxes generally but was employed in specific litigations to wit: that involving the collection of back taxes upon the estate of J. B. White, and that involving certain litigation touching the collection of back taxes due by the Georgia Railroad & Banking Company, etc.

9. William A. Wright swore that he had been Comptroller General of the State of Georgia for more than thirty years, and as such, he had general supervision of all Tax Receivers of said State and it was his duty to issue to such Tax Receivers yearly instructions touching their duties in the collection of all taxes due the State, and its sub-divisions, which by law was required to be assessed by the Tax Receivers; that he had each year issued such instructions, including the years 1911 to 1917 inclusive, in which he always sought to impress upon the tax receivers their duty under the law, to see that all persons owning stocks and bonds in foreign corporations, monies, notes and accounts, etc., as well as other property, be made to make returns thereof at fair market value for taxation; that he had never countenanced any of the Tax Receivers of the State allowing any taxpayer to return his property at any percentage of the value thereof, and had no personal knowledge that such had been done; that so far as his office was concerned there had never been any concerted effort to tax property in any other manner than as provided by law; that each of his books of instructions were similar in character for the years 1911 to 1917 inclusive.

10. Excerpts from copies of such instructions of the Comptroller General to the various Tax Receivers of the State for the years 1911, 1914, 1915, 1917, 1919 and 1921, were introduced as follows:

[fol. 369] Paragraph three of page 5 of his report for 1911:

"Strive to secure fair and honest returns of property at its fair market value from every taxpayer in your County."

Page 22 under the head of "Stocks, Bonds, Notes, Accounts, Judgment, Mortgages, Liens, etc.," as follows: "Shares of stock of all non-resident corporations owned by citizens of this State, whether held in or outside of this State, are by the Constitution of this State made subject to State and County taxation, and you are instructed to require them returned to you for taxation. Should the owners of any such stocks, fail or refuse to make return of them, claiming that they are not subject to taxation, your duty is to assess them and place them on the digest of your County."

And page 27: "Upon you devolves the important duty of seeing that each and every taxpayer returns his property on the same basis for the purpose of being taxed thereon, and that basis is the one fixed by law, i. e. at its true and full market value. There exists many difficulties which will meet you in your attempt to make parties return their property on this basis, but your duty is plain, and you can in a great degree, with the assistance of your grand juries, correct this evil so prevalent."

And page 28: "Read and study this law carefully, and see to it that every taxpayer is required to return his property as the law requires."

In each of the Books of Instructions for the years in question are to be found the identical instructions as aboved quoted.

11. H. J. Fulbright, swore that he had been Tax Commissioner for the State of Georgia, since 1917, and as such he was familiar with the method of taxing property in the State of Georgia, and with the tax laws of said State; that the constitution and laws require that all property should be returned and taxed ad valorem, according to its fair market value, which was arrived at, as a rule by the return of the taxpayer under oath; that there was no uniform systematic method existing among the tax officials of the State of [fol. 370] taxing property at any per cent of its fair market value, but where property was returned as being worth $10,000, the same was assessed 100 per cent, and the rate of taxation throughout the State was uniform and applied to all property; that there may be a number of tax defaulters in the State,—persons who did not make any return of their property for taxation at all, or when making a return, did not disclose all of their property subject to taxation, but none of these practices were inaugurated by the taxing officials of the State, nor are such practices encouraged by them; that the taxing officials cannot possibly know, even approximately, the number of shares of stocks and bonds concealed and not returned for taxation, or the value thereof, but that where they do know of such property that is not returned and taxed, they insist upon its being taxed and returned; that he was not aware of any uniform, systematic practice of the taxing officials of the State, allowing stocks and bonds, where they knew of their existence to escape taxation; and while it was true that one of the troubles deponent and all other taxing officials in the State had to contend with, was the failure of taxpayers to disclose their intangible property subject to taxation; that they do not know who has such property, and who not, and after they know of it, then the tax laws are enforced against such property and its owners in like manner as all other property; that instead of there being any uniform, systematic system allowing stocks and bonds to escape taxation, it is the policy and practice of such tax officials to have this class of property assessed for ad valorem taxes, whenever the inheritance tax appraisments discloses that it has been omitted from returns for that purpose by the owner thereof during his life time; that there is no uniform, systematic discrimina-

tion practiced by the Tax Receivers in taxing one kind of property at one rate, and another kind of property at another rate, of which, he had knowledge; that it is impossible for the Tax Receivers over the State to at all times, know whether the taxpayers are telling the truth when they swear to their returns, or not, and if some taxpayers make oath that their property is of a certain market value in the [fol. 371] same county, and other taxpayers in other counties do likewise, this is not the action of the tax officials but of the taxpayers themselves, seeking to escape their just share of the burdens of government; that instead of there being any uniform, systematic rule of discrimination practiced by the taxing officials of the State, deponent says that if discrimination does exist, it is his observation that such is due to the taxpayers themselves and not to the tax laws of the State, nor to the action of the tax officials thereof.

12. C. O. Perry swore that he was Tax Receiver of Crisp County, and had been for twelve years, and since his incumbency of office, he had always sought to carry out the instructions of the Comptroller General of the State with reference to all classes of property, whether realty or personal; that he had no knowledge of any stocks and bonds in foreign corporations held by residents of the County that had not made the regular tax return on them; that there is no uniform method in assessing property, only at the fair market value as prescribed by law.

13. L. A. Hall, of Baker County, Georgia, swore that he had been Tax Receiver of said County for the past eighteen years; that since his incumbency of such office, he had always sought to carry out the instructions of the Comptroller General of the State with reference to assessing personal property such as stocks and bonds in foreign corporations, at their fair market value, as far as it had been in his power to do so; that he had no knowledge of any such personal property nor the owners thereof, which had been withheld from taxation by such owners; that he knew of no uniform, systematic rule in force in said State whereby the Tax Receivers have uniformly assessed such property at any per centage of its value, and to the best of his knowledge such a system did not exist.

14. A like affidavit was made by the following Tax Receivers of the State, all of which were introduced in evidence, the only difference being in the number of years that each had held office, to-wit: [fol. 372]

L. D. Gribble	Tax Receiver		Towns County.
C. N. Rountree,	"	"	Houston County.
E. C. Hefner,	"	"	White County.
P. H. Bond,	"	"	Murray County.
W. R. Lee,	"	"	Candler County.
W. C. Matthews,	"	"	Lincoln County.
I. E. Highsmith,	"	"	Brantley County.
E. D. Paulk,	"	"	Ben Hill County.
R. L. Morgan,	"	"	Bryan County.

E. P. Lane,	Tax Receiver	Baldwin County.
J. B. Coon,	" "	Clinch County.
L. F. Grovenstein,	" "	Effingham County.
Iber D. Dickson,	" "	Morgan County.
W. M. James,	" "	Jones County.
M. H. Teague,	" "	Gwinnett County.
H. I. Horton,	" "	Newton County.
J. B. Wilcox,	" "	Dodge County.
J. H. Hilliard,	" "	Mitchell County.
George Sutton,	" "	Tift County.
J. J. Williams,	" "	Dooly County.
J. M. Knight,	" "	Lowndes County.
L. B. Chastain,	" "	Gilmer County.
Ed Kendrick,	" "	Gordon County.
G. L. Austin,	" "	Chattahoochee County.
Ab Hammond,	" "	Quitman County.
J. C. Williams,	" "	Forsyth County.
S. E. Bolton,	" "	Screven County.
J. T. Spinks,	" "	Paulding County.
Chas. W. Lowe,	" "	O'Connee County.
H. T. Johnson,	" "	Spalding County.
A. G. Young,	" "	Irwin County.
J. McL. Camerson,	" "	Long County.
R. M. Smith,	" "	Douglas County.
K. H. Davis,	" "	Dade County.
J. E. Drake,	" "	De Catur County.
C. E. Waters,	" "	Jenkins County.
J. L. Bledsoe,	" "	Heard County.
R. H. Cosby,	" "	Webster County.
J. D. Fuller,	" "	Talbot County.
W. L. Johnson,	" "	Brooks County.
J. J. Shedd,	" "	Barrow County.
G. L. Revelle,	" "	Columbia County.
H. L. Strickland,	" "	Tattnall County.
W. A. Talley,	" "	Lanier County.
J. F. Thompson,	" "	Harris County.
C. L. Cason,	" "	Warren County.
Geo. W. Coleman,	" "	Montgomery County.
L. S. Harrell,	" "	Pulaski County.
John S. Dickerson,	" "	Walton County.
J. E. Thorpe,	" "	Troutlen County.
E. S. Wright,	" "	Crawford County.
W. H. Spear,	" "	Muscogee County.
J. G. Roberts,	" "	Miller County.
R. H. McLendon,	" "	Pike County.
W. S. Carpenter,	" "	Habersham County.
G. T. Stapleton,	" "	Wilkinson County.
J. A. Lindsey,	" "	Johnson County.
W. J. White,	" "	Cherokee County.
M. L. Collins,	" "	Grady County.
J. W. Hunt,	" "	Polk County.

E. E. Joiner,	Tax Receiver		Washington County.
W. F. Readdick,	"	"	Camden County.
R. L. Goodroe,	"	"	Marion County.
J. A. Wallace,	"	"	Dawson County.
D. C. Floyd,	"	"	Troup County.
Geo. D. Jones,	"	"	Sumter County.

[fol. 373]

J. B. Keen,	"	"	Laurens County.
W. P. Scott,	"	"	Emanuel County.
Leslie Crowder,	"	"	Meriwether County.
J. H. Lacey,	"	"	Wilcox County.
R. W. Crawford,	"	"	McDuffie County.
J. A. Ingram,	"	"	Bartow County.
Charley Deck,	"	"	Whitfield County.
J. Tol. Phillips,	"	"	Hall County.
W. B. Holton,	"	"	Worth County.
P. N. Combs,	"	"	Wilkes County.
J. W. McQuaig,	"	"	Ware County.
A. O. Flowers,	"	"	Liberty County.
J. W. Weeks,	"	"	Fannin County.
W. T. Carden,	"	"	Floyd County.
J. Ed Vaughn,	"	"	Banks County.
W. J. Smith,	"	"	Elbert County.
H. R. Reynolds,	"	"	Seminole County.

IN THE UNITED STATES DISTRICT COURT

STIPULATION AS TO TRANSCRIPT OF EVIDENCE

It is hereby agreed between counsel for appellants and appellee, that the foregoing 65 pages contain a true and correct copy of a transcript of all the evidence introduced on the hearing for permanent injunction, in the case of E. H. Callaway, Executor, of the Estate of J. B. White, complainant in the lower court, appellee herein, vs. State of Georgia, Richmond County, Board of Education of Richmond, Chas. S. Bohler, Tax Collector of Richmond County, C. A. Steed, Tax Receiver of Richmond County, and J. T. Plunkett, Sheriff of Richmond County.

This 28th day of August, 1923.

George M. Napier, Attorney General. Seward M. Smith, Asst. Atty. General. Benj. E. Pierce, Wallace B. Pierce, Wm. K. Miller, Attorneys for Appellants. E. H. Callaway & W. M. Howard, Attorneys for Appellee.

The foregoing transcript of evidence is hereby approved. This August 28th, 1923.

Wm. H. Barrett, United States Judge.

[File endorsement omitted.]

[fol. 374] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 28, 1923

Now come the appellants in the above stated cause and file these their assignments of error to the judgment of the lower court rendered in said cause on the 25th day of June, 1923, in overruling appellants' motions to dismiss and granting the injunction prayed for, upon which they will rely for a reversal thereof in the Supreme Court of the United States.

Assignments of Error on Motion to Dismiss

Because the court erred in overruling appellants' motion to dismiss in the nature of a demurrer duly filed in said cause, on the 10th day of April, 1922, upon the following grounds:

1. Because the averments of the petition did not entitle plaintiff to the injunction and general equitable relief prayed for.

2. Because plaintiff's petition failed to set out any property that was in his possession or to which he had title which could be clouded or affected by the tax fi. fas. in question; because it failed to state that he was in possession of any property subject to said tax fi. fas. and that the injuries apprehended apparently did not exist.

3. Because it appeared that neither the State of Georgia nor its [fol. 375] officials had deprived, or were seeking to deprive plaintiff of the equal protection of the law, in that it appears from his petition that plaintiff, a citizen of Georgia, had never appealed to the State for protection—had never sought to follow the remedy prescribed by the State law to meet the conditions set out in his petition, to wit, the remedy prescribed by the Act of July 31, 1918, Public Laws page 232; because said act provided the only remedy for defaulting taxpayers in the condition of plaintiff, whose unreturned property had been assessed for unpaid taxes, to dispute the taxability of the property so taxed, which thereunder, had to be by petition in equity addressed to the superior court of Richmond County, and it nowhere appeared in plaintiff's petition that he had ever sought to avail himself of this remedy.

4. Because it appeared from plaintiff's petition, that he was a defaulter, and did not come into the court with clean hands, but sought to raise by petition in this court, claims of inequitable discrimination between him and other taxpayers of the State of Georgia, which should have been raised upon the return of testator's property for taxation for the years 1911 to 1917, and before other State taxpayers

had paid their taxes, upon returns as made by them in said years, and who have apparently since been settled with by the State.

5. Because no unusual nor arbitrary penalties were sought to be enforced against plaintiff by the State, but the apparent effort of the State was to collect the usual ad valorem taxes on the fair market value of the assessed property of the testator, and that it was no excuse to plaintiff, executor, a defaulter, that other taxpayers did or did not return their property at its fair market value in 1911 to 1917, especially as it did not appear that the tax receivers of the State knew of such non-return, or that taxpayers were holding out and not returning property subject to taxation; nor did petitioner show by his bill, that his testator brought this condition, if it existed, to the [fol. 376] attention of the Tax Receivers in 1911 to 1917, and that such tax officials had refused to assess or tax such property at its true value, when by the law of Georgia, it was his privilege to have so informed the Tax Receivers.

6. Because it was apparent from the petition that there was no unequal, arbitrary nor systematic inequitable discrimination whatever being urged against plaintiff; that White was the original defaulter in 1911 to 1917, and such was followed by plaintiff, as his executor, when, being summoned by the Tax Receiver to return the property in question for taxes, he failed or refused to do so, and property that should have been returned by White during the years 1911 to 1917 was then assessed under the statute aforesaid, Act 1918, page 232, by the Tax Receiver in July, 1919, upon the best information he could obtain as to its value for the years in default, and that plaintiff had not contested or denied such value, but claimed he should not pay taxes upon such property because other state taxpayers, during said years had not returned or had not paid taxes upon the market value of similar property as owned by them, if such was the case, which did not appear.

7. Because plaintiff, the Executor of a defaulting taxpayer of Richmond County, presented no equitable reason why this court should now enjoin under the Fourteenth Amendment to the Constitution of the United States, the State of Georgia, its political subdivisions or its officials, from seeking to collect the public revenue due to the State in its governmental capacity by plaintiff's testator, as far back as the years 1911 to 1917, when said petition showed that there was no issue as to the true value of the property assessed by the Tax Receiver, nor of plaintiff's duty to pay the taxes due thereon by testator.

8. Because the court had no jurisdiction to review or to adjudge the validity or invalidity of the arbitration and award proceedings [fol. 377] set up and relied upon by plaintiff, to avoid payment of the taxes claimed by the State of Georgia in this case.

9. Because if the court did have jurisdiction, it was apparent that the arbitration and award proceedings set up in the petition as Exhibits "A" and "B," and relied upon as an estoppel against the State as preventing it from collecting taxes justly due it, are wholly void.

10. Because no such proceeding for tax defaulters of plaintiff's class was authorized by the laws of the State at the time it was instituted and insisted upon by plaintiff, to wit, in July, 1919.

11. Because there was no legal power in the Tax Receiver of Richmond County, after July 31, 1918, to enter into any arbitration agreement with plaintiff.

12. Because there was no legal power in the Board of Commissioners of Richmond County, to appoint an Umpire after July 31, 1918, and any such appointment after that date was wholly void; and because it did not appear that the agreement to arbitrate was ever recorded on the minutes of the Board of Commissioners of Richmond County, as was required by the State law to make their action valid.

13. Because it was apparent that the State could not be deprived of its public revenue by the act of any public official, not expressly authorized by law, and that any agreement to arbitrate made by a Tax Receiver with a defaulting taxpayer, after the passage of said Act of 1918 (Public Laws, 1918, page 232), was void, and the State was not bound by any action had thereunder, and could not be bound or deprived of its revenue under an arbitration proceeding such as was authorized prior to July, 1918, but which had been expressly or [fol. 378] impliedly repealed by the aforesaid Act of July 31, 1918, and a new and fuller remedy thereby provided, for the defaulting taxpayer.

14. Because the judgment plead was void as against the legal rights of the State to enforce the tax fi. fas. sought to be enjoined in this case; because neither the State of Georgia nor the County of Richmond could be concluded by any reference to an arbitration made by Tax Receiver Steed, in July, 1919, as there was no law of force in the State at that time, which authorized such, as by the Act of July, 1918, such law of arbitration was repealed.

15. Because a judgment under the State law, dismissing the bill attacking said award for want of equity, did not include the legal rights of the parties; dismissal for want of equity leaves the legal rights of parties of force and in effect the same as if the litigation had not taken place.

16. Because the plea of res adjudicata did not set forth any such facts as would entitle plaintiff to the relief sought in his bill.

17. Because the record attached to said plea relates to and contains different subject matter than that involved in the present case.

18. Because the question before the court was not that a Federal court of equity could not, under any circumstances, enjoin illegal, unconstitutional State taxes, as assumed by the court, but that in order to do so, complainant should come in under some well known [fol. 379] equity head, such as that the executions cast a cloud upon complainant's title to real estate, or to prevent a multiplicity of suits, or prevent irrevocable loss, neither of which it is submitted was al-

leged or proven in this instant, and therefore it was error in the court not to dismiss the complaint and refuse the injunction.

19. Because even had complainant made such allegations in his bill and it should appear that complainant had an adequate statutory remedy provided him by the State, then a Federal Court will not assume jurisdiction in a cause to enjoin the collection of State Revenues; and it appearing from this record that the State of Georgia had enacted a statute prescribing such an adequate statutory remedy which complainant admittedly had refused to follow, the court should have refused the relief sought by refusing to take jurisdiction in this case, and erred in not so doing.

20. Because when the lower court found, as it did, that the Georgia Act of 1918 was constitutional and provided due process of law and that such act denied complainant the right to arbitration, he should have dismissed said complaint and not to do so was error.

21. Because it appeared from the record in said cause that the National Bank stock was not intentionally assessed, but its inclusion was an error; and furthermore, that even though the same had been intentionally assessed, this would not of itself have been sufficient to authorize the court to assume jurisdiction in this cause, in the absence of allegations bringing the same under some well recognized head of equitable jurisdiction, and such allegations not being made, it was error in the court to retain jurisdiction of the cause, and grant the injunction prayed for, as it did on the 25th day of June, 1923.

22. Because under the Act of 1918 the making of the assessments [fol. 380] by the Tax Receiver was merely the beginning by the State of the effort to collect taxes due it, and such assessments could not become binding under the Act of 1918 until after the refusal by complainant to raise the issue by petition in equity in the Superior Court of Richmond County that such assessments were excessive, or illegal, and not having done so, complainant had no standing in the Federal Court of equity to enjoin said tax proceedings in the State court upon the executions issued on such assessment; there had been no effort to stop the same by a proceeding in the State Court as prescribed by the State laws, especially the Act of 1918, page 232, and to hold such was not necessary, and thereupon the court retained jurisdiction of said cause, and grant- the relief sought as was granted, but the judgment appealed from was error.

23. Because the remedy prescribed by the Act of 1918 was strictly a State statutory legal remedy, and a same prescribed due process of law should have been followed by complainant in the State Courts; and such remedy so prescribed could not be administered in a Federal Court of equity as the practice in equity in a Federal Court is wholly different and distinct to that in the State courts of Georgia.

Assignments of Error on Admissibility of Evidence

1. Because the court erred in admitting in evidence the record of what is known as the State Court Injunction Suits, copies of which

are set out in detail to an amendment allowed complainant on the 21st day of September, 1922, wherein complainant amended by adding to paragraphs 38, 40 and 53, various allegations as to such suits being res adjudicata of the issues involved in the present case. [fol. 381] This record as introduced, consisted in brief, of a petition filed by the State of Georgia, for the purpose of enjoining the holding of an arbitration touching the valuation of the property which had been assessed by C. A. Steed, Tax Receiver of Richmond County, and are the assessments upon which the executions were issued that are sought to be enjoined in the Federal Court in this suit. This petition alleged the death of said J. B. White, the execution and probation of his will, the appointment of said Callaway as executor; that the county authorities had ascertained that said White owned some $1,300,000 worth of stocks and bonds in foreign corporations, which had not been returned for taxation during the years 1911 to 1917 inclusive; that the statutory demand was made upon said Callaway, Executor, for a return thereof for taxation for the years 1911 to 1917 inclusive, who refused to make a return thereof; that subsequently a mandamus proceeding was brought to compel the Tax Receiver to proceed to assess said property, to which proceeding it was sought to make said Callaway, Executor, a party, but he demurred thereto, which the court sustained and refused to make him a party. That when said mandamus proceeding came on for a hearing on the 14th day of July, 1919, the Judge refused to make the mandamus absolute, but continued the hearing thereof until the depositions of one J. B. Clews, a member of the firm of Henry Clews & Company, Bankers of New York, in whose possession said securities had been deposited by said J. B. White, could be taken. It was further alleged that such depositions were taken and that said Clews testified that the said White had on deposit with his firm for the following years *for* the following amounts:

Year 1911	$1,012,366.00
" 1912	1,397,671.67
" 1913	1,344,405.83
" 1914	1,556,915.83
" 1915	1,443,500.83
" 1916	1,508,436.00
" 1917	1,375,408.50

[fol. 382] This testimony it was alleged, was then submitted to the Tax Receiver and he thereupon assessed the property (in the amounts set out in this bill). That when the main mandamus case came on for a hearing on August 1, 1919, the Judge refused the mandamus absolute and such case was then carried to the supreme court by writ of error; that thereafter, the executor of White demanded an arbitration, and the arbitrators took an oath under the Equalization Act of 1913, page 123; that no hearing had been had and none should be allowed to come on because the Equalization Act of 1913, had no application to the question at issue, and the oath therefore was illegal; that the assessment had been made under the Act of 1910, which

act provided an arbitration might be had within twenty days after receiving a notice for the return of such property for taxation, and none having been made, such right was waived; that the arbitrators had not taken the proper oath of office because the right to arbitrate under the Act of 1910 was dependent upon a demand therefor within twenty days from such notice, etc. The prayer was that said arbitration be enjoined, etc.

To this petition, said Callaway orally demurred and the Judge refused an injunction and the case was then carried to the Supreme Court by writ of error.

Attached thereto was the bill of exceptions carrying the case to the Supreme Court of Georgia, and also the decision thereof, affirming such ruling, with the remittitur from the Supreme Court.

Attached to said amendment, and offered in evidence, was also a copy of another suit brought by the State of Georgia, in behalf of itself and the other taxing authorities, for the purpose of setting aside the award which the foregoing proceedings sought to enjoin, said arbitration having been held, upon several grounds, among them being that the arbitrators had, in reaching their award, done so in an illegal manner, by deducting all indebtedness due and owing by said White, and then divided the equities of said White by four and returned this as their award, when the law allowed no such procedure; that the Board was illegally organized; because such Board refused to return any award as to the true value of the property; [fol. 383] because none of the evidence offered by the executor tended to disprove the value of the property as had been assessed; that the award was so small compared with the value of the property as to show prejudice and bias; because the property was worth nearly ten times the amount of the award, etc. Attached to this petition as exhibits, was set out all the evidence submitted to said Board of Arbitrators. The prayer was that the award be declared null and void and that the same be set aside.

To this petition, Callaway, Executor demurred upon certain special grounds and generally upon the ground that said petition set forth no legal or equitable cause of action, and also filed an answer and cross petition.

This case came on for hearing upon the demurrer, and the lower court sustained the same and dismissed the petition; whereupon the case was carried to the Supreme Court of Georgia upon writ of error. The Supreme Court thereupon affirmed the lower court. In this decision it was held that the dismissal of said petition was not error in that the award was void for the reason that Georgia Laws 1918, page 232, denied a tax defaulter the right of arbitration and his remedy was by petition in equity to the Superior Court of Richmond County if dissatisfied with such assessments, and this being true, the award was void and equity would not set aside a void award. There were several opinions written, one by two judges holding as above; one by another concurring dubitante as to the Act of 1918 controlling; and one concurring on the ground that the State was estopped and the award valid, and the Act of 1918 had no bearing. The objections

urged in the lower court to the admissibility of such evidence, and assigned as error herein are as follows:

1. Because plaintiff before filing the petition in this case, failed to do that equity which would enable a court of equity to hear him, to wit, failed to pay the amount of taxes admitted to be due before the filing of the petition in this case.

2. Because said record contains no facts showing that the issues [fol. 384] set up in the present proceeding were adjudicated and passed upon therein, and the same therefore is inadmissible as evidence of res adjudicata of such issues.

3. Because plaintiff by his bill is claiming that he has been illegally discriminated against by being assessed more than other taxpayers and there is nothing in said record which establishes any such fact, and said record and exhibits thereto are therefore irrelevent.

The harmfulness of such ruling in allowing the introduction of such record is made self-evident when the judgment of the court shows that to all intents and purposes it made the award of such Board of Arbitration its judgment; although holding the same to have been illegal and void by reason of the Act of 1918, which denied the right of arbitration to tax defaulters and remitted him for relief to the Superior Court of Richmond County.

2. Because the court erred in admitting the following testimony of C. A. Steed:

"I was Tax Receiver of Richmond County in 1918 and remember the assessment placed upon the securities of J. B. White for that year. It was $250,000.00. I remember the Jack Estate. It was assessed for $150,000.00. If the entire return of stocks and bonds of Richmond County for last year was $482,000.00, that would leave to the balance of the County $132,000.00. I did not follow literally the figures of the affidavit in the assessment. In a hurry I put some figures down there. I think probably $150,000.00 too much, as they don't tally. My assessment amounts to about $150,000 more than Clews & Company's statement shows. The affidavit of Mr. Dougal and Mr. McPherson were brought down here.

We had a rule not to assess for the full market value. In starting out where there is no arbitration I would probably make the assessment at the full market value, but whenever it gets down to an arbitration, I never make it at the true market value, but I would 'most always take the first assessment and put it down, and if the parties forced me to an arbitration, settle on some basis later on lower than the full market value.

The Board of Assessors never go over two-thirds valuation on mortgages, stocks and bonds. I have not been doing that. That has been done by the Board of Assessors. They have been in existence about six years.

When I make assessments it is generally in accordance with the property value. I have never undertaken to assess any property at its full market value. I know of other large estates that have been

administered here, which I have not undertaken to assess. It has [fol. 385] not been brought to my attention. I begin to see that I will have to go after them. So far I have not gotten after them. I have not been ordered by the Comptroller General to go after them. I did have one estate that I had adjustment in the Benson Estate. Had instructions from the County Commissioners, but was not arbitrated. We settled it with Mr. Hamilton Phinizy and Pierce Brothers, who represented the Benson Estate. We started out with the full market value and I think we settled on about 33 1/3 per cent. on the dollar."

Cross-examination:

I never reported any of these instances that Judge Callaway asked me about to the Comptroller General. To be candid with you, I have never examined those records. I knew of these estates in a general way. The State's taxing authorities, outside of its being represented by me, don't know anything about them, up until this year. I didn't think I had anything to do with it until this case came up, and the law was changed last August.

Redirect examination:

Mr. White paid taxes here during these years. He was the largest taxpayer on real estate, approximately $600,000.00.

Cross-examination:

I never did have a taxpayer come in to make his returns and state in answer to question number 17 that he had $1,000,000.00, and I tell him "I will assess you at $200,000.00." If you make a return of $100,000.00, I put you down at $100,000.00. If you come to me as taxpayer and make your return and say "I have $1,000,000.00," I put you down at $1,000,000.00.

over the following objections urged thereto on the hearing for final injunction, to wit:

1. Because the complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to filing the petition in this case.

2. Because the said Steed cannot be heard to impeach his official acts by testifying as to what his secret intentions were, nor as to his having violated the law in making assessments of property as required by law.

Which ruling, appellants assign as error upon the grounds above stated, in this court.

3. Because the court erred in admitting an affidavit of John W. Dickey, wherein he swore that he had been actively engaged as a broker in stocks and bonds in Augusta since 1866; that through his dealings he was largely familiar with the ownership of stocks and

[fol. 386] bonds by the people of Augusta; that he had from time to time bought and sold to residents of the City of Augusta many stocks and bonds, and had also sold similar securities for local customers; there are, or until recently were, outstanding, approximately $1,200,000 of bonds issued by local corporations, 75% at least, being owned by local people; that the Georgia Railroad and Banking Company had outstanding $2,500,000 of bonds, the larger portion of which are owned in Augusta; that from his experience in buying stocks in non-resident corporations, he estimates that there are from two to three million dollars' worth of stocks and bonds in non-resident corporations owned by the Citizens of Augusta, and that the stocks in non-resident corporations, and bonds of local corporations, not including municipal bonds owned by the people of Augusta, amount in the aggregate to $4,000,000 and upward; that he had from time to time sold stocks and bonds in the Cities of Savannah, Macon and Atlanta, and while not as familiar with the ownership of stocks and bonds in those cities as in Augusta, he knew the people of Macon owned such stocks and bonds to a greater extent than in Augusta; that he would say that the people of Savannah and Atlanta owned similar securities from at least twice to five times the amounts of such holdings in Augusta; that the Comptroller General's report for 1918, showed for the people of Richmond County the returns and assessment of stocks and bonds was only $482,000, and that he was sure such figures did not represent more than 10% of the aggregate amount of stocks in non-resident corporations, and the bonds of corporations other than municipal bonds, actually owned during said years by the residents of said County; and if, as deponent is informed, $400,000 of said amount represented the assessment for said year on the stocks and bonds of the estate of J. B. White and the estate of D. F. Jack, the remaining $82,480.00 did not represent more than 2% of the aggregate amount of such securities actually owned during said year by the people of Richmond County; that he had inspected the figures contained in Table No. 12 of the Comptroller General's report for the years 1916 and 1918 under the heading of "Stocks and Bonds," and from the figures shown in said reports for said years for the Counties of Chatham, Fulton and Bibb [fol. 387] the percentage of stocks and bonds returned in those counties for said years as compared with the amount of such securities owned in said counties would not exceed five per cent. Also that he was familiar with the custom of parties buying stocks and bonds through brokerage or commission houses on margin where the buyer deposits or pays to the commission house only a part of the purchase price of the stocks or bonds bought for his account, and the brokerage or commission house furnishes the balance of the purchase money and holds the bonds and keeps the stock in the name of the broker until it is finally paid for; that in all such cases the buyer had only a marginal interest in the securities so purchased until he finally paid the balance of the purchase price.

The objections urged to the admissibility of this testimony and assigned as error in this court, being as follows:

1. Because the complainant in this case failed to do equity by paying the amount of taxes which he admitted to be due, or by offering to pay such amount as the Court might find to be due, before the filing of the petition in this case.

2. Because the same does not give the names of any owners of any amount of property, the kind or character thereof, nor that the same was owned on any specific taxable dates for the years 1911 to 1917 both inclusive; so far as said affidavit is concerned all the property referred to may have been returned and taxes thereon paid by the various owners thereof as required by law.

3. Because the same is merely the opinion of said deponent and is without probative value.

4. Because the same does not show any uniform, systematic method adopted by the Tax Receiver of Richmond County, nor of any of the other various counties of the State, of discriminating against owners of such property as referred to therein.

4. Because the court erred in admitting in evidence an affidavit of Rufus H. Brown, wherein he swore that the aggregate amount of [fol. 388] the deposits in all of the Banks of the City of Augusta for the several years in question were as follows:

January 1, 1915	$8,296,607.00
" 1, 1916	10,135,480.00
" 1, 1917	12,827,533.00
" 1, 1918	17,632,542.00
" 1, 1919	20,145,949.00

but he had no record of such deposits prior to January 1, 1915, over the objections urged to the admissibility of said affidavit on the hearing for permanent injunction, as follows:

1. Because the complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due or by offering to pay such amount as the court might find to be due, before the filing of the petition in this case

2. Because the same is without probative value as to the issues involved.

3. Because said affidavit gives no names, nor does he state that any of said cash was owned by any given persons on any of the taxable dates for the years 1911-1917 inclusive.

4. Because said affidavit does not give the various names of the depositors of such amounts, whether or not they were residents of the State of Georgia, and owned any money on the taxable dates for the years 1911 to 1917, nor does he state whether or not such money on deposit was not owned either by the United States Government, the State of Georgia, the City Council of Augusta, or non-residents of said State, therefore not subject to taxation in said State; nor that

the owners thereof had returned the same and paid the taxes thereon as the law required.

Which said ruling appellants assign as error in this court upon said grounds above set out.

5. Because the Court erred in admitting in evidence an affidavit of E. H. Callaway, dated August 20, 1919, in which he swore that he had examined the records of deeds and mortgages in the Clerk's Office of the Superior Court in Books 6 Y's 6 Z's, 7 A's, 7 B's, 7 C's, [fol. 389] 7 D's, 7 E's, 7 F's, and 7 G's, in which books were recorded such instruments during the years 1909 and 1910, and that he found recorded security deeds, mortgages upon real estate, and bond for titles, exclusive of banks and non-resident lenders, and not cancelled on February 1, 1911, aggregating $1,083,342; that of such securities so inspected by him, there were cancelled during the year 1911, $156,771, leaving uncancelled on February 1, 1912, the aggregate sum of $926,571; that of said securities so recorded, there were cancelled during the year 1912, the aggregate sum of $138,338, leaving uncancelled of said securities so recorded on the 1st of January, 1913, $748,233; that of such securities so recorded there were cancelled during the year 1913, $118,651, leaving uncancelled of said securities so recorded on the 1st of January, 1914, $629,582; that there were cancelled during the year 1914 of said securities so recorded $64,781, leaving uncancelled on the 1st of January, 1915, of said securities so recorded as stated above, $564,801; while deponent noted and indicated a large number of cancellations during the years following the year 1914, he had not tabulated them, etc., upon the following grounds:

1. Because complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due, or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said affidavit is of no probative value and gives merely an opinion of the said Callaway and does not give the names of any owners of any of the property referred to therein, nor does it state that such property was owned by said parties on any of the taxable dates for the years 1911 to 1917 inclusive; nor does it state that such property was not returned for taxation by the owners thereof on the various taxable dates for said years.

Which said objections were then and there urged to the admissibility thereof and overruled by the court, and the ruling is hereby assigned as error in this court upon said grounds.

[fol. 390] 6. Because the lower court erred in admitting in evidence the joint affidavit of James S. Bussey, Jr., and Henry G. Howard, dated August 20, 1919, who swore that they had examined the Deed Books in the office of the Clerk of the Superior Court of Richmond County, and found of record security deeds and mortgages on real estate, uncancelled, the following amounts for the following years:

January	1, 1912	$606,612
"	1, 1913	1,373,853
"	1, 1914	1,964,015
"	1, 1915	1,872,698
"	1, 1916	682,712
"	1, 1917	434,264

over the following objections urged to its admissibility upon the hearing for permanent injunction, and then and there overruled, to wit:

1. Because the complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due, or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said affidavit is of no probative value and gives merely an opinion of the said Bussey and Howard and does not give the names of any owners of any of the property referred to therein, nor does it state that such property was owned by said parties on any of the taxable dates for the years 1911 to 1917 inclusive; nor does it state that such property was not returned for taxation by the owners thereof on the various taxable dates for said years.

And appellants assign error on such ruling upon the grounds stated in this court.

7. Because the lower court erred in admitting in evidence the affidavit of E. H. Callaway, dated August 23, 1919, wherein he swore that he had recently examined the Books of Inventories in the office of the Ordinary of Richmond County, showing the inventories of estates from the year 1913 to the year 1918, inclusive; that he took figures only from estates exceeding in value $10,000, and tabulated from said inventories only the reported money in Bank, solvent and [fol. 391] secured notes, taxable bonds and stocks in non-resident corporations, and thus tabulating sixty-six estates during said years, the aggregate amount of such property consisted of $1,579,122, which did not include the Estate of J. B. White; and from said examination tabulated cash in Bank, solvent and secured notes, taxable bonds and stock in non-resident corporations in eighteen estates, the aggregate amount of such property being $1,180,489; said eighteen estates being distributed or classified as follows: Stocks in non-resident corporations $421,943; taxable bonds $191,690; solvent and secured notes, $323,648; cash in bank, $243,208, making a total of $1,180,489; over the following objections urged to its admissibility and then and there overruled, to wit:

1. Because the complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due, or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said affidavit is of no probative value and gives merely an opinion of the said Callaway and does not give the names of

any owners of any of the property referred to therein, nor does it state that such property was owned by said parties on any of the taxable dates for the years 1911 to 1917 inclusive; nor does it state that such property was not returned for taxation by the owners thereof on the various taxable dates for said years.

Which ruling appellants say was error upon each and every ground so urged and they hereby assign error thereon upon said grounds.

8. Because the lower court erred in admitting in evidence certain extracts taken from the Comptroller General's Annual Report of the State of Georgia, for the years 1911 to 1917, showing the amount of money, solvent debts, merchandise, stocks and bonds in the Counties of Richmond, Bibb, Chatham, Burke, Wilkes, Columbia, Putnam, Morgan, Habersham, Troupe, Coweta, Floyd and McDuffie; aggregating for each of said years in money and solvent debts from one to two million dollars, and in merchandise, two to three million dollars, and in stocks and bonds aggregating, from $139,000 to $865,000, for the Counties of Richmond, Bibb and Chatham; and in [fol. 392] the County of Burke in money and solvent debts from $210,000 to $500,000, and in stocks and bonds from $5,000 to $19,000; in Wilkes County from $384,260 to $492,000 in money and solvent debts, and in stocks and bonds from $500 to $3,000; in Columbia County aggregating in money and solvent debts from $49,000 to $94,000, and in stocks and bonds $200; in Putnam County in money and solvent debts from $240,000 to $300,000, and nothing in stocks and bonds; in Morgan County in money and solvent debts from $375,000 to $599,000, and in stocks and bonds from $600 to $1,050; in Habersham County in money and solvent debts from $147,000 to $200,000, and in stocks and bonds from $500 to $4,000; in Troupe County in money and solvent debts from $285,000 to $375,000, in stocks and bonds from $2,000 to $48,000; in Coweta County in money and solvent debts from $490,000 to $750,000, in stocks and bonds from $1,000 to $36,000; in Floyd County aggregating in money and solvent debts from $1,450,000 to $2,862,000; and McDuffie County aggregating in money and solvent debts from $70,000 to $145,000, and stocks and bonds from $2,000 to $4,000. There was also included in this excerpt average value of improved lands for some ten Counties of the State, which ranges from $2.70 per acre up to $12.96 an acre. The Excerpt also showed the total returns as taken from said report from the entire State of Georgia in money and solvent debts, as follows:

Year	Amount
1911	$52,004,236
1912	50,534,356
1913	50,086,210
1914	56,386,283
1915	53,559,002
1916	50,700,597
1917	53,722,017
1918	65,613,596

The stocks and bonds for the same years, are as follows:

1911	2,939,050
1912	2,802,550
1913	3,324,580
1914	2,557,881
1915	2,601,150
1916	1,721,508
1917	1,657,948
1918	1,972,152

Also an extract from the printed report of said Wm. A. Wright, Comptroller General of the State of Georgia, for the year 1912, dated January 1, 1913, and addressed to the Governor of Georgia, on [fol. 393] the subjects of "Revision of Tax System" and "Invisible Personal Property," as the same appears upon pages 13 and 14 of said printed report, and which is as follows:

Revision of Tax System

"A thorough revision of our revenue system is needed and has been repeatedly urged by this Department. This is a subject of vital importance to all classes of citizens and should receive the attention of the General Assembly at its approaching session. The defective and disjointed machinery for assessing property for taxation permits much of the taxable property of the State to escape taxation altogether, and a very much larger proportion to evade its just and equitable part. It is not necessary for me to state that the evils of our system obtain equally in the case of assessment of property of individuals as well as corporations, and as well in the several counties of the State. Indeed, it is a well known fact that in many cases the assessment of property in counties adjoining each other, and where practically like conditions exist, very very widely, thus placing on citizens in one county heavier burdens than are borne by their neighbors in the other. All taxation should be uniform, and a system of assessing property should be provided to accomplish as far as possible absolute uniformity. Just in so far as this is not obtainable the system is defective and necessarily lays the burdens of the government unequally and unjustly. In addition to the lack of uniformity and equality in our tax assessments which I have said so uniformly obtain under our present system, there is yet a much greater evil resulting from it, to which I would respectfully invite your attention. I refer to the listing for taxation of such property as might be termed invisible personal property, such as notes, mortgages, accounts, stocks, bonds and choses-in-action. It is a generally known fact that this class of property in this State represents a considerable part of the wealth of Georgia, yet it is equally true that but a very small amount of it is ever returned for taxation. Some method should be adopted to reach this property and place it on the tax books, and thus compel it to bear its just burden of the government. The State of Alabama has a statute providing for

county tax commissioners to look up all omitted property from the tax rolls of their counties, their compensation for such service being solely on the commission basis. I might add that the City of Atlanta has tried this method very satisfactorily for several years, and I would recommend that something of this kind be provided for the State. The present system of assessment is but little better than voluntary contributions by taxpayers to the State's revenue."

over the objections urged thereto upon the following grounds, to wit:

1. Because the complainant in this case has failed to do equity by paying the amount of taxes which he admitted to be due, or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said statement does not show any discrimination, and does not show the names of the owners of any property on the taxable dates for the years 1911 to 1917 inclusive.

[fol. 394] 3. Because the same is merely hearsay and is only an opinion.

4. Because the same does not show any specific property owned by any persons on the taxable dates for the years in question.

5. Because all the property listed by the Comptroller General so far as said report goes may have been owned by corporations, such as banks who were not required to return the same.

6. Because said report was not dealing with unreturned property which had been concealed by taxpayers.

(a) Because the same does not show that any stocks and bonds owned by any taxpayer in the State was returned at any percentage of the value thereof, but under the head of "Stocks and Bonds" appears simply a gross sum as being what was returned in the several counties shown.

(b) Because so far as such excerpts show, all of such property was returned and taxed as the law requires, to wit, at its fair market value, by the owners thereof.

(c) Because the figures shown under the head of "Stocks and Bonds" may appear seemingly small, the court cannot reason therefrom that such property has been allowed to escape taxation by the failure of the taxing officers to do their duty under their oaths; neither can the court reason therefrom that because such figures appear smaller than would be expected, that therefore all property in the State has been assessed at not more than a small percentage of its value and by such reasoning hold, that the Tax Receiver in making the assessments complained of, illegally, and unconstitutionally discriminated against the Estate of J. B. White, but such fact must be proven to all "intents and purposes," as was said by the Supreme Court of the United States, quoted in the Wright case, 125 Ga., 630,—such proof must be positive, direct and unequivocal,

and there are no facts contained in any of said reports which tends to prove any such fraudulent, systematic, illegal and unconstitutional discrimination as is inhibited by the Fourteenth Amendment to the Constitution of the United States, or that any such was caused by the Tax Receiver of Richmond County, Georgia, against the complaint in this case. In other words, the court will not assume [fol. 395] nor take judicial cognizance that stocks and bonds, such as are herein involved,—stocks and bonds in foreign corporations, —were owned by persons on any taxable dates that they should have been taxed in said State, but were not returned or taxed.

Which said ruling appellants assign as error in this court upon such grounds so urged and overruled.

9. Because the court erred in admitting in evidence certain extracts from the 7th Annual Report of Hon. H. J. Fulbright, State Tax Commissioner, for the year 1920. This report gave a general régime of his acts and doings and recommendations with reference to the Tax System of Georgia. The express part introduced in evidence being excerpts from pages 5, 6, 23-27, as follows:

From page 5, "Values were not ordered reduced in any county, as being disproportionately high, for the very evident reason, that they nowhere approached the legal requirement of 100%, and for the further reason that the legislature had made appropriations that called for more money than would be realized from the highest values that could be secured."

And from page 6, "At that time (meaning the year 1919) the whole State was enjoying prosperity of such an unusual character as to very much inflate values, and for that reason the State Tax Commissioner did not think it wise to insist upon a strict compliance with the law that requires all property returned at full value. On the other hand it was decided to adopt as a minimum basis for equalizing purposes 35 per cent of the then estimated true values."

And from pages 23 to 27, giving estimated true value as of January 1, 1920, and per cent of same represented by Digest as finally approved by State Tax Commisisoner, for the various counties of the State and the per cent as returned for taxation which showed estimated percentage of returns to range from 56% to 60% as estimated by him,

over the following objections, to wit:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the Court might find to be due, prior to the filing of the petition in this case.

2. Because said report has no probative value and is merely the opinion of said Fulbright.

Which grounds of objections were then and there urged and overruled, and said ruling appellants assign as error in this court [fol. 396] upon said grounds.

10. Because the court erred in admitting in evidence the affidavit of E. H. Callaway, dated September 18, 1922, wherein he swore that certain inventories of twelve estates, formerly residents of said County, certified copies of which were offered in evidence, were included in the inventories of the sixty-six estates that were examined by him and referred to in his affidavit of August 23, 1919, and also in his affidavit of April 22, 1922, and were selected at random, showing some of the larger estates administered in said County, and some of the smaller estates; for the years 1915 to 1918 the records of inventories disclose more than one hundred estates where the decedents, were residents of, and owned either money, notes and credits, or taxable stocks and bonds, or both, in said county, and for the years 1911 to 1917 inclusive, show the record of more than two hundred estates where the decedents were residents of said County at the time of their death and owned either money, notes and credits, or taxable stocks and bonds, or both, and in all of said instances the Tax Digests of said County for the years immediately preceding the death of said intestates, disclose that they made no returns of any money, notes or credits, or taxable stocks and bonds for taxation, and in the few rare instances where any such property was returned, it was only in a nominal amount; that the proportion of said classes of property returned by the decedents in the twelve estates where certified copies of inventories and tax returns are introduced in evidence, discloses a fair average of all tax returns made of said classes of property, to wit, money, notes and credits, and taxable stocks and bonds for all the decedents of said County, for the years 1911 to 1917 inclusive; that notwithstanding said facts, with reference to said estates, was brought to the attention of C. A. Steed, the Tax Receiver, and to the attention of his attorneys who brought the proceedings to collect the back taxes from the estate of J. B. White, in the affidavit of deponent of August 23, 1919, which was used before the Arbitrators in the Tax Arbitration pro- [fol. 397] ceeding on September 2, 1919, and were again called to the attention of said attorneys in the affidavit of deponent, of April 22, 1922, for the hearing for interlocutory injunction in the present case; no proceedings have ever been instituted either by the said Tax Receiver, nor by his said attorneys who instituted the proceedings in this cause, nor by any other tax officials of said State or County; the only other instance of any attempt to collect back taxes, as testified by the Tax Receiver before the Arbitrators, was on the Estate of Wm. E. Benson, and that this was settled for 33⅓% on the dollar; and that the conduct on the part of said attorneys representing said tax officials in the present case, and of said Tax Receiver and all other tax officials of the State or County who have had any connection whatever with this cause, amounts to deliberate, intentional and willful discrimination against the estate of J. B. White; that all of said decedents, the inventories of whose estates were produced as evidence in said cause, were residents of said Richmond County for more than 7 years prior to the dates of their respective deaths; upon the following grounds, to wit:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said affidavit contains no facts showing discrimination, nor does it deny the value of the property as assessed by the Tax Receiver.

3. Because the same is merely an opinion of the said Callaway and states no facts showing illegal and unconstitutional discrimination.

All of which were then and there urged, and overruled, and which said ruling is hereby asigned as error upon each and every ground so urged.

11. Because the court erred in allowing in evidence the assessment made by the Board of Equalizers for the year 1918, upon the property in question; this assessment showed that such Board of [fol. 398] Equalizers for that year assessed the same property which the Tax Receiver had assessed for the years 1911 to 1917, for something like $250,000, over the following objections, to wit:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because the assessment referred to was for the current year 1918 and has no probative value of the property which was assessed by the Tax Receiver for the years 1911 to 1917 inclusive.

3. Because the act of said Board of Equalizers who only had jurisdiction for the year 1918 does not prove illegal, unconstitutional discrimination in the present case.

4. Because the acts of one Board for a year subsequent to that involved in the present litigation is not admissible to impeach the act of the Tax Receiver, who was the only tax official who had authority to assess the property which he did assess for back taxes.

5. Because it does not appear that said Board had before it, the same evidence of value and ownership as was presented to said Tax Receiver, who made the assessments in question, but on the contrary, that the said Callaway did appear before them and did contend with them as he did with the Tax Receiver as to the taxability of said property and it was under these conditions that such an assessment was made.

All of which were then and there urged and overruled by the court, and such ruling is hereby assigned as error in this court upon each and every such ground.

12. Because the court erred in admitting in evidence an affidavit of J. B. Clews, dated August 5, 1919, in which he swore as to the amount of indebtedness due by said J. B. White to his firm, and in which he stated that said White only had a marginal interest in said property over and above the amount his said firm had advanced said J. B. White on margin, over the following objections, to wit:

[fol. 399] 1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said affidavit is of no probative value.

3. Because the amount of indebtedness due by said White is inadmissible as there is no law allowing the deduction of any indebtedness of a taxpayer from the value of property owned by him for taxable purposes.

4. Because even if the stocks and bonds were held, as set out by said Clews & Company, as security for any indebtedness, this did not change the legal status of said intangible personal property for taxable purpose and did not remove the situs therein from Richmond County, the domicile of said J. B. White, for the years 1911 to 1917, inclusive.

5. Because when the assessments in question were made, all indebtedness of Clews had been paid as was owing.

6. Because under the law of Georgia, taxpayer is not allowed to deduct any indebtedness owing by him and return only his net worth.

7. Because under the law of Georgia, where a taxpayer conveys property to secure an indebtedness he does not change the situs of the property for the purpose of taxation and cannot deduct such indebtedness and return only his equity of redemption on such property for taxation.

All of which said grounds of objections were then and there urged and overruled, and appellants assign error thereon in this court upon each and every ground so urged.

13. Because the court erred in admitting in evidence a certain report made by a Tax Commission appointed by the Governor generally know as the State Tax Commission, for the purpose of recommending such legislation as they might deem advisable for a change in the tax laws of the State of Georgia. This report is too voluminous to [fol. 400] encompass within reasonable bounds, but contained a general regime of the tax conditions of Georgia, as in the opinion of said Board existed, giving their opinion of what the taxable values of the property in Georgia *was* and in general what the percentage of such values as had been returned for taxation by the taxpayers of Georgia was, which showed the average percentage valuation less than 100%, ranging anywhere from twenty five to fifty per cent.

The objections urged against the admissibility of this evidence being as follows:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because the same is hearsay and does not show who owned the property referred to, nor does it give the name of any property owners who had not returned their property for taxation, nor does it deal with unreturned property at all.

3. Because the same is irrelevent and without probative value.

All of which objections were then and there urged and overruled and appellants assign error on such ruling upon each ground so urged.

14. Because the court erred in admitting in evidence the report of John C. Hart, State Tax Commissioner, for the year 1914; this report contained a general regime of the tax situation as he saw it for such year and contained certain recommendations with reference thereto; over the following objections, to wit:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because said report is hearsay and without probative value.

[fol. 401] 3. Because the same does not give the name of any person or statement of any specific property, which had not been returned for taxation; who the owners thereof were, nor was it dealing with unreturned property; and therefore does not show any illegal, unconstitutional discrimination, so far as the present case is concerned.

Which objections were then and there overruled, and which ruling is hereby assigned as error in this court upon each ground set forth.

15. Because the court erred in admitting in evidence an address made by Henry J. Fulbright, State Tax Commissioner, dated January 1, 1919. This address was directed to all County Tax Officials of the State of Georgia, in which he stated that he had sought to obtain reliable information as to real values, in order that he might compare such values with the returned values as shown by the Tax Digest of several counties of the State; that he accordingly called them to meet him at different points, as convenient, to confer with him as to values; that he adopted country real estate as the basis of computation for the reason that it was only that class of property common to all counties, the quantity of which is shown by the tax books; that he compared such values with the average returned value of each county and found the actual per cent of the returned value

represented by the returned value; that he assumed other property was returned upon about the same basis and computed the real value of all property in the several counties in this way.

"The aggregate amount, as shown by the tax digest of the counties, when submitted to me for approval last summer of all returned and assessed property in the State, is $982,623,580. According to the computation made in the way pointed out above, this represents 32 6/10 per cent of the actual value of the property thus returned for taxes, and a conservative valuation of the property on the tax books, at the present time, is a little more than Three Billion Dollars."

Then went on to state that ninety-six counties fell below the State average of 32 6/10 per cent; that no one who believed in justice and fairness will oppose some effort of equalizing, and certainly no county [fol. 402] below the average for the State would hesitate, to take the necessary steps to bring its values up to the average. Then followed the general statement of what he sought to do and his reasons for devoting so much time to the work, which was to say that justice was done between all counties. Appended to this report are tables of all the counties in the State, the first of which shows the per acre average of improved lands as shown by the Tax Digest in the first column, and the second column the estimated per acre real value, which per acre average ran from $4.50 to $37.85 per acre, and the estimated real value ran from $7.50 to $100 an acre in some counties. Table #2 showed the aggregate amount of the digest of each county for the year, 1919, with aggregate of the estimated value of the property of the county, and the per cent of real value shown by the return. Table #3 showed the counties which should be increased in order to be equalized, etc. Which said testimony was objected to upon the following grounds:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes which he admitted to be due; or by offering to pay such amount as the court might find to be due, prior to the filing of the petition in this case.

2. Because the same is without probative value, and has reference to a year subsequent to any of the years for which said assessments have been made.

3. Because the said Fulbright is not an assessing officer in the first instance, and his conclusions are not proper testimony going to show illegal, unconstitutional discrimination.

All of which objections were then and there urged and overruled by the court, which ruling appellants assign as error in this court upon each and every ground so urged.

16. Because the court erred in admitting in evidence certain inventories of the Estates of Moses C. Murphy, Mrs. Julia C. Langdon, David B. Printup, Mrs. Bridget Gallaher, Mrs. Lizzie M. Fearey, Chas. A. Crawford, Robert M. Styles, Mrs. Lucy W. Caswell, Mrs.

[fol. 403] Mrs. Mary T. Acton, Fred B. Pope, D. F. Jack and Mrs. Madge Williamson Stearns, which inventories showed the amount of property owned by said several decedents at the date of their death, as appeared of file in the Ordinary's Office of Richmond County, which evidence appellants objected to upon the following grounds:

1. Because the complainant in this case had failed to do equity by paying the amount of taxes admitted to be due, or by offering to pay such an amount as the court might find to be equitably due prior to the filing of the petition in this case.

2. Because they are without probative value and show no facts which tend to prove the illegal, unconstitutional discrimination complained of.

3. Because they do not show that any of the property listed therein was owned by any of the parties named on any of the taxable dates for the years 1911 to 1917 inclusive.

4. Because if these parties had defaulted in the return of their property, would be no defense to this plaintiff when called upon to pay his taxes justly due upon admitted values.

5. Because it does not appear that the property in question should have been returned for taxation, and taxes paid thereon.

All of which were overruled by the Court and appellants assign the same as error in this court upon each of such grounds.

17. Because the court erred in admitting in evidence certain tax returns of said foregoing named parties, which showed the amount of property returned for taxation by said several parties during the years 1911 to 1917 inclusive. The objections urged against the admissibility of this evidence being as follows:

1. Because the same are without probative value and do not prove the unconstitutional discrimination contended in this case.

2. Because an inspection of such returns does show that these parties made a return of their property, and in the absence of proof to the contrary, the courts will presume that they made a return of all [fol. 404] their property of which they were the owners on the taxable dates of all years prior to their deaths, and that the Tax Receiver did his duty by assessing the same as required by law.

3. Because if it appears that eighteen people in a County the size of Richmond County, did not make a fair return of their property for the purpose of taxation, is no such proof of unconstitutional discrimination, as would authorize a Federal Court of equity to enjoin State Revenue Officers in the performance of their official duties.

4. Because it does not appear that any of the taxing officials had notice of the ownership and value of any of such property during any previous years upon the taxable dates.

All of which grounds were then and there urged and overruled by the court and such ruling is hereby assigned as error in this court upon each of said grounds.

18. Because the court erred in admitting in evidence certain contracts between attorneys representing the State of Georgia and Richmond County, under which they had been employed to represent the taxing authorities in the present litigation; the same in no manner illucidates the matters at issue and are irrelevant.

19. Because the court erred in admitting in evidence the affidavit of James P. Verdery, wherein he swore that he had been a resident and taxpayer of Richmond County for thirty years, and had been familiar with property values in said county for fifteen years, and a member of the Board of Equalizers in said County since 1914, and was such member at its meeting in the summer of 1918, when the securities, money, solvent debts of the Estate of J. B. White were before the Board for assessment, and had before it the inventory of the Estate showing the ownership by said estate of securities, etc., aggregating approximately $2,000,000; that among said securities were $500,000 worth of bonds in Georgia Corporations and stocks in National Banks located in New York, which they were informed [fol. 405] were not taxable in Georgia; that as the Board had understood, the executor of the estate might take the position that the securities were non-taxable; that he, as chairman, obtained an opinion from said Board's advisory counsel, Cumming & Harper, under date of June 18, 1918, which letter is attached to the affidavit, and which in substance advised the Board that White being domiciled in Richmond County such property would be taxable there, but in the same letter there was cited the case of Greene vs. Louisville & Interurban Railway Co., 244 U. S., 499, where it was held that it was the duty of the Board not to discriminate against the Estate of White, but to treat said estate in the same manner as other taxpayers of the State and County holding like securities; that after having said letter before it, and discussing the matter with the executor, who appeared before them, said Board assessed such securities in the aggregate sum of $250,000; that under the law, said Board was not only a Board of Assessors, but a Board of Equalizers, and from the best information he could obtain, the assessments so made by said Board for said year on said securities were at a higher rate percentage of the full values thereof than the percentage of the returns of similar classes of property as made by the taxpayers of Georgia bore to the full market value for the year 1918, as well as for the years from 1911 to 1917 inclusive; that it was a fact well known not only to the people generally, but to the executive and tax officials of the State, and to the members of the General Assembly, that said classes of securities are not generally returned for taxation by the owners thereof, and when returned, are returned generally at a mere nominal percentage of their full value; also in admitting in evidence the affidavit of H. K. Lowery, another member of said Board of Equalizers, in similar language as that of said James P. Verdery; over the objections urged thereto in the lower court as follows:

(a) Because said Verdery and Lowery are members of the Board of Equalizers, created under the Act of 1913, and their powers extend only to the current year, and what they did or failed to do in the year 1918, is irrelevent and inadmissible to upset an assessment made [fol. 406] by the Tax Receiver for the years 1911 to 1917 inclusive, where he was acting within the scope of his duties as defined by law and especially when the value of the property which had been assessed by him was admitted and the same was omitted property for the years 1911 to 1917.

(b) Because said affidavits show that said Board in making said assessment for the year 1918, fixed the amount at a mere nominal sum of its admitted value, because the executor was before them contending that none of it was taxable by reason of White's alienage, and such action is no proof that the assessments made by Steed for the years 1911 to 1917 was a violation of the Constitution of the United States as being discriminatory against the Estate of said White.

(c) Because the letter attached to the affidavits is irrelevent and inadmissible and is without probative value touching the issue involved.

(d) Because said affidavits contain no facts, but is a mere conclusion or opinion of said parties, as no facts are given upon which to base the assertion that the assessment of 1918 made by said Board was at any higher rate of percentage than that placed upon similar classes of property as made by the taxpayers of Georgia, this being the issue which is to be determined by this court.

(e) Because even though other taxpayers may have returned their property at a less value than it was worth is no evidence that there was any systematic discrimination practiced by Steed, Tax Receiver in making said assessments.

(f) Because said affidavits merely show, if they show anything, that there may be tax dodgers in Richmond County, but the same does not give the name of a single person owning a single piece of property or the character thereof, which has been allowed to escape taxation by any conduct of the Tax Receiver of Richmond County; nor does it show any taxable dates upon which any such property was owned by any one, but said affidavits are nothing more nor less than a mere surmise by the affiants therein.

Which said objections were then and there overruled by the court, [fol. 407] and said ruling is hereby assigned as error in this court, upon each and every such ground set out above.

20. Because the court also erred in admitting in evidence certain affidavits of one H. R. De Jarnette, of Putnam County, who swore that he was a member of the Special Tax Commission, appointed by the Governor of the State of Georgia, under an Act of August 20, 1918, and served as such, until the Tax Commission made its report

on June 1, 1919; that during the sessions thereof, extending from the Fall of 1918 to the Spring of 1919, he made considerable investigation into the values of various classes of property in Georgia; that where it was possible to get statistics either from the United States Government, Census Departments or other sources, the same was used and made available by said Tax Commission; that it was impossible to obtain any definite or accurate information as to intangible property owned by the taxpayers of Georgia, as no statistics were available; but from the amount of money on deposit in the Banks of the State, after making reasonable deductions, and by adding thereto what seemed to be, from inquiry, the relative ownership of solvent debts as compared with the ownership of actual money by the various classes of people of the State, the conclusion was reached that the actual return of money and solvent debts in the State, disclosed by the Comptroller General's report for 1918, did not represent more than 10% of its fair market value; that deponent and other members of the Commission were confronted with the lack of statistics from any source, showing the aggregate amount of stocks and bonds owned by the taxpayers of Georgia, but from inquiries made of brokers and others, he was of the opinion that the aggregate amount of such property as shown by the Comptroller General's reports for 1918, did not represent more than 5% of the full aggregate value; that from the best information he could obtain, that comparatively the same low percentage rates of returns of full values of such property prevailed during the years fom 1910 and 1912 down to 1918. Deponent then set out in his affidavit copies of excerpts from the Comptroller General's reports from 1911 to 1918, showing [fol. 408] the various amounts of money, solvent debts, and stocks and bonds as appeared to have been returned during the years 1911 to 1918; that from reliable statistics as stated above, there was on deposit in Georgia banks in 1918 the sum of $380,000,000; that for said year the Comptroller General's report showed a return of only $65,613,596; that from the reasons hereinbefore stated, deponent was of the opinion that said aggregate returns for the State for said years, of money and solvent debts, did not exceed 10%, and that the amounts set forth above of stocks and bonds as returned for taxation, did not represent more than 5%; that the conditions above referred to as prevailing in the State were generally known by the people of the State, the executive and tax officials of the State, and members of the General Assembly; over the following objections urged thereto in the lower court, to wit:

(a) Because the same is irrelevent and without probative value and does not throw any light upon the questions at issue in said cause.

(b) Because same does not give any facts but states mere conclusions and the opinion of said affiant.

(c) Because affiant himself states that it was impossible to get any reliable facts upon which to base his conclusions.

(d) Because it appears therefrom that affiant accepted as true, certain figures and then proceeded to estimate what percentage would be necessary to make the same.

(e) Because he does not give the name of any taxpayer who owned any property on any taxable date on any of the years 1911 to 1917 inclusive, nor the value thereof.

(f) Because there are no facts set out in said affidavit which show any systematic uniform method of assessing property for taxation in said state, at anything less than its true value, but at most the same merely states the opinion of the witness and this is a fact to be determined by the court.

Which said ruling of the court in overruling said objections to the admissibility of said testimony, appellants now assign as error in this court upon each and every ground set out above.

[fol. 409] 21. Because the court erred in admitting in evidence the affidavit of G. W. Graham, of Burke County, Georgia, wherein he swore that he had been a resident and tax payer of Burke County for a number of years; that from 1910 to 1916 he was Tax Receiver, whose duty it was to receive the returns of taxpayers and make out a digest thereof, one copy of which was sent to the Comptroller General; that during said period he was familiar with property values and that he set forth extracts taken from the Comptroller General's report for the years 1911 to 1918 inclusive, showing the returns of average value of improved lands per acre, and aggregate returns of money and solvent debts, and stocks and bonds for said years; that in his opinion the average value of returns on improved lands did not represent more than 20% of the fair market value, and of money and solvent debts, not more than 10%, and of stocks and bonds as shown in said table, not more than 5% of the actual value of such property as owned by the citizens and taxpayers of said county for said years; that prior to the establishment of the County Board of Tax Assessors and Equalizers in 1914, he did all in his power to have the percentage values of property increased, but was unable to do so; that if deponent had assessed such property for anything like its full value, or half value, or 33-⅓%, his assessments would have met with demands for arbitration and such arbitrators would have in each instance, restored the property to its usual price, etc.; that after 1914 the Board of Assessors and Equalizers made efforts to increase the values and had little more success than he had; that said conditions were not confined to Burke County but existed throughout the eastern section of the State, and so far as deponent was advised, existed throughout the entire State, and so far as deponent was informed such condition was known to all tax officials of the State, the executive and legislative departments thereof, and that only in the last few years had any effort been made to increase the percentage of lands in returns and assessments for taxation, over the objections urged thereto as follows:

(a) Because the same is irrelevent and is merely the opinion of the affiant.

[fol. 410] (b) Because he has merely copied certain figures from purported reports of the Comptroller General and then proceeded to estimate what was the percentage of the value of all property in the County of Burke.

(c) Because said affidavit with reference to what would have been the effect of an arbitration where an assessment was made at anything like its full market value is utterly without probative value and in irrelevent and inadmissible.

(d) Because said affidavit does not give the name of a single person who owned a single piece of property, nor the value thereof, on any taxable date for any of the years 1911 to 1917, inclusive, which had not been returned for its fair market value, but is merely the assertion of an opinion by the witness.

(e) Because there are no facts set out therein which in the slightest degree establishes any systematic, illegal discrimination practiced by the Tax Receiver of Richmond County in making said assessment complained.

All of which grounds appellants assign as error in this court.

22. Because the court erred in admitting the affidavits of the following witnesses:

The affidavits of A. C. Zachry, of Morgan County, Georgia, A. H. Winter, Ordinary of Morgan County, Georgia, and J. G. Herren, also of Morgan County, Georgia, which were similar in character, wherein deponents swore that they had been for a number of years residents and taxpayers of Morgan County; Herren testifying that he had been Chairman of the Morgan County Board of Tax Assessors for five years, Zachry stating that he had been Tax Collector of said county for ten years, and Winter stating that he had been Ordinary of said County for ten years, then proceeded to set forth in said affidavits a table of figures taken from the Annual Reports of the Comptroller General of the State of Georgia for the years 1911 to 1918 inclusive, showing the tax returns as made for said Counties on the following kinds of property, to wit: improved lands [fol. 411] per acre, money and solvent debts, stocks and bonds, which, they stated, did not in their opinion represent more than 20% of the fair market value of improved lands, and that the amount of money and solvent debts returned for taxation in said county in their opinion, did not represent more than 10% of the fair market value thereof, and the amount of stocks and bonds returned by the taxpayers of said county, when returned at all, did not in their opinion, represent more than 5% of the fair market value of such stocks owned in said county; that it had not been customary for the taxpayers to return such stocks and bonds for taxation, and when returned, they were only returned at a nominal percentage of their fair value, and that the returns of other classes of property were at

about the same average percentage of their fair market values; that after 1918 the percentage of values of real estate was considerably increased, owing to the efforts of the State Tax Commissioner; that said condition was not peculiar to Morgan County, but prevailed throughout the entire middle section of the State, and so far as deponents were advised, prevailed throughout the State, which condition was known to the executives and tax officials of the State, and to the members of the Legislature of the State.

Also the affidavit of P. N. Combs, of Wilkes County, who swore that he had been a taxpayer of said County for twenty-five years, in which affidavit is set out a table taken from the Comptroller General's Report for the years 1911 to *1911 to* 1918 inclusive, showing average value of improved land per acre, and shows the aggregate amount of money, solvent debts, and stocks and bonds for said years, and that such amounts did not, in his opinion, represent more than 20% of the value of farm lands, money and solvent debts not more than 10%, and stock and bonds not more than 5%.

Alike affidavit of F. B. Sims, of Wilkes County, Georgia, who stated that he was a member of the Board of County Tax Assessors for said County; and another by Clement E. Sutton, also of Wilkes County who swore that he was at the date of the affidavit, and had been since 1919, Judge of the City Court of Washington, of said County, and a taxpayer for more than fifteen years in said County; [fol. 412] and one by Frank E. Callaway, also of Wilkes County, who stated that he was, and had been since 1911, Clerk of the City Court of Washington in said County, and a citizen and taxpayer of said County for more than twenty years.

An affidavit of J. E. Camp, of Floyd County, who stated that he was a member of Floyd County Board of Commissioners of Road and Revenues; one of Sam L. Graham, of Floyd County, who stated that he was Clerk of the Superior Court of said County, and had been for the last two years; and one of J. Zach Salmon, also of Floyd County, who swore that he was Tax Receiver of said County for the years 1915 to 1921 inclusive.

Also an affidavit similar in character of W. W. Hardaway of McDuffie County, who stated that he had been Clerk of the Superior Court of said County since 1909; one of G. W. Lokey, who stated that he had been Ordinary of said McDuffie County since 1912; and an affidavit of W. A. Watson, also of McDuffie County, who stated that he had been Tax Collector of said County since 1912.

A like affidavit of J. A. Robertson, of Habersham County, who stated that he had been Ordinary of said County for 14 years; of Geo. T. Daniel, who swore that he was a Justice of the Peace and Notary Public, and a practicing attorney of Habersham County, and had been a citizen and taxpayer of said county for more than fifteen years; and Idus E. Brewer, also of Habersham County, who stated that he was Clerk of the Superior Court of said County.

A similar affidavit of W. S. Hubbard, of Coweta County, who swore that he had been Tax Collector for said County for the years 1911 and 1912; G. E. Parks, who stated that he was one of the tax assessors of said Coweta County, and had been for seven years; and,

Paul B. Smith, also of Coweta County, who stated that he had been Tax Receiver of said County continuously since 1914.

Also, a like affidavit from Edward F. Lowell, Jr., of Chatham County, who stated that he was Chairman of the Board of Tax Assessors, of the City of Savannah, Chatham County, since 1918; A. B. Moore Jr., also of Chatham County, who swore that he was Clerk [fol. 413] of the Board of County Tax Assessors from 1914 to 1917, two years a member of the Board, since that time to the date of the affidavit, Chairman; and William L. Grayson, also of Chatham County, who stated that he had been Clerk of Superior Court of said County, for eleven years prior to the making of said affidavit.

Another affidavit similar in character from Edward B. Harrold, of Bibb County, who stated that he was Chairman of Bibb County Tax Equalizers for six years, and at the time of making the affidavit was Chairman of City of Macon Tax Board; one from W. K. Young, who stated he had been property bookkeeper, Tax Receiver, and now Assistant Tax Receiver for the past ten years; and Morris Harris, also of Bibb County, who swore that he had been Tax Assessor for the City of Macon from 1896 to 1907, and again in later years, and was such at the time of making said affidavit.

Also, an affidavit similar in character from H. D. Glanton, and one from T. J. Thornton, both of Troupe County, Georgia; H. C. Butler of said Troupe County, who stated that he was a real estate dealer, and had served on the Board of Tax Assessors of the City of La Grange for the past eighteen years; and A. M. Marshall, of Putnam County, who stated that he was Tax Collector of said County, and had been for more than seven years; and one of like character from C. D. Leonard, Jr., also of Putnam County, who stated that he had been a member of, and Chairman of the Board of Tax Assessors of said County for several years.

A like affidavit from John Lamkin, of Columbia County, who stated that he had been a member of the Board of County Tax Assessors for said County, since 1914; and one from P. B. Mundy, who stated that he was Ordinary of said Columbia County from 1911 to 1921, and since that time had been Chairman of the Board of County Commissioners of said County.

Another of J. C. Palmer, of Burke County, who stated that he had been Tax Collector of said County since 1917 and was at the time of making the affidavit; W. H. Davis, who stated that he had been Judge of the City Court of Waynesboro, in said Burke County for the past ten or twelve years; E. E. Chance, also of Burke County, who [fol. 414] swore that he had been a member of the County Board of Tax Assessors for said County from 1914 to 1920; and W. M. Fulcher, also of Burke County, who stated that he was Clerk of the Superior Court of said County from 1910 to 1917 inclusive.

A like affidavit from J. Frank Carswell, of Richmond County, who swore that he was City Tax Assessor of personalty for the City of Augusta for the years 1913, 1914 and 1915.

All the foregoing affidavits were similar in purport, except as to the number of years which they had resided in said several Counties, and their several occupations, all of whom copied in their affidavits the

table taken from the Comptroller General's report of the State of Georgia, from the years 1911 to 1918 inclusive, showing the average values of improved lands per acre, money and solvent debts, stocks and bonds, as appeared to have been returned for taxation for said several counties during the years 1911 to 1918 inclusive, and all of which stated that in their opinions the aggregate amount of money and solvent debts returned did not exceed 10%, and that the amount of stocks and bonds as returned, in their opinions, shown from said table did not represent more than 5% of that owned by the people of the several counties; that in their opinion said conditions were not peculiar to the various counties, but prevailed throughout the adjoining counties of the State, and which condition was known to the executives and tax officials and members of the legislature of said State. To which said affidavits appellants then and there objected upon the following grounds:

(a) Because all of said evidence is irrelevant and contains no facts which illucidate the issues involved in this case.

(b) Because each of said affiants merely gives his opinion of what percentage of property is returned in his county as it is nowhere stated in said affidavits what is the value of the taxable property in any county.

(c) Because affiants have accepted as true, certain figures which they say were copied from the reports of the Comptroller General and then proceeded to estimate what percentage of the value of property [fol. 415] in said Counties the same represented, without showing the value of any property located in any single County, upon which to base said calculation.

(d) Because the only average of any percentage value as shown by the figures copied from said Comptroller General's report appears under the head of "Average Value of Improved Lands," and this merely the average value per acre of land; under the head of "Stocks and Bonds," such figures do not purport to give any average value, or percentage of value of any such property in said Counties, and such parts of said affidavits are wholly without probative value, irrelevent and inadmissible.

(e) Because none of said affidavits state what is the value of a single piece of property located in any of said Counties; nor do they give the names of the owners thereof; nor whether the same was owned on any taxable date in any one of the years in question.

(f) Because none of said affidavits contain any facts which show any systematic, illegal, unconstitutional discrimination practiced by C. A. Steed, the Tax Receiver who made the assessments complained of.

(g) Because all of the affidavits referred to herein show upon their face that they are mere stereotyped affidavits and contain no facts within the knowledge of those making them, as to what is the actual market value of any property in any county; nor at what value a

single piece of property was returned for taxation; each one of said affidavits purports to give only an opinion, and that, not of the one making the affidavit, but the person drafting such affidavit.

All of which objections were overruled by the court and appellants assign error upon such ruling upon each and every ground hereinabove set out in this court, and say that such character of affidavits were inadmissible for the purpose of showing any illegal, unconstitutional discrimination, and it was error for the court to admit and consider the same.

23. And after the introduction of all the evidence hereinabove set out in brief, appellants moved to exclude the same from evidence,—[fol. 416] it being all the evidence of plaintiff,—because it did not show any systematic, intentional, illegal, unconstitutional discrimination again plaintiff as inhibited by the Fourteenth Amendment to the Federal Constitu-ion, which motion was overruled by the court, and appellants assign the same as error in this court.

General Assignments of Error

1. Because the burden of proof was upon complainant to prove his allegations of discrimination to all intents and purposes by evidence so strong that the court would not be left doubtful in the premises, or to conjecture as to what amount of taxes was due, or as to what extent complainant had been discriminated against was *was* done in the instant case, as witness, the following language quoted from the Court's decision:

"Had the Estate of White already paid such an amount that the enforcement of any additional amount would be a discrimintion? This cannot be answered with confidence. There is not sufficient evidence to justify a positive and exact conclusion."

And it was error in the court below, on failure of such proof, to then turn to the finding of the Board of Arbitration, which the court had held could not be legally held after the Act of 1918, and be guided thereby as such award amounted to no more than the opinion of the three men who composed the same, neither of whom were before the court testifying to any fact under oath, and especially was this true when the record discloses that the same evidence which had been submitted to said Board of Arbitration, was re-introduced on the present hearing in addition to the other evidence offered by complainant, and with all such evidence before the court, the record discloses, as evidenced by the court's language quoted, that it was not at all satisfied with the character of proof submitted, and under such circumstances, it was error to grant the injunction restraining the executions in question.

[fol. 417] 2. Because the evidence submitted was wholly insufficient under the rules as laid down by this court as to when a Federal Court of equity will enjoin a State from collecting its revenues, such rule being, that before such injunction can be obtained, the

complainant must show a uniform, systematic practice existing among the taxing officials, whereby other property in the State is assessed at a lower rate than that of the complaining taxpayer, and plaintiff having failed to produce such proof, it was error to grant the relief sought.

3. Because the record disclosed that What was a willful tax defaulter, and if any discrimination was shown by the evidence of complainant, the same was brought about by the said J. B. White himself, by reason of his failure to make a proper return of his property for taxation during his lifetime, and therefore his Executor could not claim relief against the same by injunction, as was done in the instant case, and to grant such relief when such fact appeared, appellants say was error.

4. Because the evidence offered by appellants, respondents in the lower court, wholly refuted any claim made by appellee, complainant therein, as to any illegal, unconstitutional discrimination being practiced against him, which, summarized in brief, was:

(a) That of Wm. A. Wright, Comptroller General of the State of Georgia, to the effect that he had general supervision of all the Tax Receivers of the State, and duly issued to them his yearly instructions, touching their duties, with reference to the collection of taxes, in which he impressed upon them that they should see that all persons owning personal property, such as stocks and bonds in foreign corporations, monies, notes and accounts, etc., as well as other property, should be required to return the same at its fair market value and tax the same accordingly; that he would not countenance the Tax Receivers allowing any taxpayer to return property at any per-[fol. 418] centage of its value, and had no knowledge that such had been done, and that there had never been any concerted effort in the State to tax property in any other manner than at its fair market value.

(b) Evidence of H. J. Fulbright, State Tax Commissioner, to the effect that the laws of said State required all property in the State to be returned and taxed ad valorem, the value of which was arrived at, as a rule, by the return of the taxpayers under oath; that there was no uniform, systematic method among the taxing officials of the State for taxing property at any per cent. of its value, but where property was returned at a valuation, the same was assessed at one hundred cents on the dollar; that while there may have been tax dodgers in the State,—those who did not return their property at all, and others who did not return theirs at a fair valuation—that such practices were not inaugurated by the taxing officials of the State, nor were they encouraged by them; that it was impossible for the taxing officials to know, even approximately, the number of shares of stocks and bonds concealed and not returned for taxation, but where it was known, it was taxed; that there was no uniform, systematic practice of the tax officials of the State in allowing stocks and bonds, where they knew of their existence, to escape taxation, but after it

was discovered, on the contrary, the same was taxed, as the law directs, at fair market value.

(c) Testimony of C. A. Steed, Tax Receiver of Richmond County, to the effect that he had not acted toward the Estate of said J. B. White, any differently than he would have acted toward any other estate upon like information; that he did not know of any property which had not been returned for taxation; that where property was returned as being worth one amount, the same was assessed at such value, and not at any percentage thereof.

(d) M. C. B. Holley, Chairman of the Board of Commissioners of Roads and Revenues of Richmond County, testified to the effect that if his Board had the same information touching any other persons in Richmond County, as it had touching the Estate of J. B. White, it would act in the premises accordingly.

[fol. 419] (e) The testimony of some ninety or a hundred Tax Receivers from all over the State to the effect that they had sought to carry out the instructions of the Comptroller General in assessing personal property, such as stocks and bonds in foreign corporations, at the fair market value, as far as it had been in their power to do so; that they had no personal knowledge of any such personal property, nor the owners thereof, which had been withheld from taxation, by such owners; that they knew of no uniform systematic rule in force in said State whereby the Tax Receivers had assessed such property at any percentage of its value, and to the best of their knowledge, such a system did not exist.

(f) And an affidavit of Marcus S. Baker, Tax Receiver of Chatham County, to the same effect, and that he had recently collected in Chatham County, a large amount of taxes from the estates of decedents who had failed to make proper returns during their lives.

Appellants therefore say it was error in the lower court to grant the injunction, as it did, and especially so when none of the evidence introduced by appellants was rebutted by any evidence of appellee, in the lower court.

5. Because it was encumbent upon complainant in the court below, appellee herein, to allege with certainty, and prove by reasonable positive credible evidence an intentional, arbitrary, uniform, systematic, unlawful discrimination against him by the taxing authorities, and to what extent he was, by them, discriminated against. Appellants say that this he wholly failed to do, and that his allegations of discrimination are vague and indefinite, and his proof equally so. There was no proof of any facts which showed any unconstitutional discrimination. No evidence was introduced by him, showing any uniform, systematic, arbitrary rule existing between the taxing officials of the State, whereby other property of like kind, as complainant's (such as had been assessed in this instance), had been assessed at any less percentage than its market value; nor was there any legal proof that the Tax Receiver of Richmond County had uni- [fol. 420] formly and systematically assessed other property of like

kind in said County, at anything less than its market value. The market value of the property in question, which had been assessed, was not disputed, and there was no proof of the ownership of other property of like kind owned by any other taxpayers, or its market value, on any of the taxable dates for either of the years in question, and which, was known to the tax officials of the State, or Richmond County, and that had not been assessed at all by them, or had been assessed at any percentage of true market value. Giving complainant's evidence its fullest force, it merely tended to establish that there were tax defaulters in the State; and that some, when returning their property for taxation, made false returns of its value; it merely tended to show that some taxpayers thus may have escaped their just share of the burdens of Government, but such proof, when there was no attack on their tax returns, could not show unconstitutional discrimination against complainant, and is no defense to complainant when called upon to bear his just and legal taxes. And furthermore, appellants submit that if complainant's evidence established the existence of any rule existing between the taxpayers of the State, whereby they would not return their property at all, or where returning the same, would return it at less than its fair market value; there was no evidence whatever that such custom or such rule was the result of any agreement between the tax officials of the State, or instituted by them, and appellants say it was error in the lower court to grant any injunction against the State's revenue in this instance.

6. Because, when complainant's claim with reference to the legality of the arbitration proceedings being final and conclusive against the taxing authorities, is laid aside, it will be seen by reference to his bill that he would have only been entitled to enjoin the excess beyond fifty per cent, had he conclusively proven the same, [fol. 421] as witness, the following language from paragraph 55 thereof; "That the Tax Receiver of said County, claims that neither, he, as Tax Receiver, nor the County Board of Assessors, ever assessed any property at its full value but tried to assess real estate at 66 2/3 per cent of its value, and money, notes, and securities, where returned, at fifty per cent of its value." And therefore, appellants say, that if the evidence established any discrimination, clearly it was palpably error for the lower court to grant any relief further than that contended for, and enjoin the executions in question for more than fifty per cent of the value of the property.

Wherefore appellants pray that the decree of the District Court be reversed.

George M. Napier, Attorney General of Georgia; Seward M. Smith, Asst. Attorney General of Georgia; Benj. E. Pierce, Wallace B. Pierce, Wm. K. Miller, Solicitors for Appellants.

I, Wm. H. Barrett, Judge of the United States Court for the Southern District of Georgia, hereby certify that the objections to the admisibility of the evidence set out in the foregoing assignment

of errors were urged before me and overruled on the hearing of said cause. It is ordered that said *said* assignment of errors be filed and become a part of the record on appeal.

This 28th day of August 1923.

Wm. H. Barrett, United States Judge.

Due and legal service of a copy of the foregoing assignment of errors is hereby acknowledged. All further notice and service waived.

This 28 day of August 1923.

E. H. Callaway & W. M. Howard, Solicitors for Appellee. S.

[File endorsement omitted.]

[fols. 422 & 423] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

BOND ON APPEAL FOR $1,000.00—Approved and filed Aug. 28, 1923

[fol. 424] [File endorsement omitted.]

[fol. 425] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

PRECIPE FOR TRANSCRIPT OF RECORD—Filed Aug. 28, 1923

Now come the appellants in the above stated cause, and designate the following parts of the record as necessary to a clear understanding of the issues involved in the present appeal.

1. The original complaint filed in office on the 23rd day of March, 1922, together with all entries thereon, including the order of Honorable Beverly D. Evans, United States Judge, granting a temporary restraining order, and the acknowledgment of service upon a copy of the temporary restraining order signed by Hon. Beverly D. Evans, United States Judge, of the Hon. Thomas W. Hardwick, Governor of Georgia, George M. Napier, Attorney General, and Hon. Seward M. Smith, Assistant Attorney General.

2. The temporary injunction signed by C. J. Skinner, Deputy Clerk, dated March 23rd, 1922.

3. Respondents' motion to dismiss, filed April 10, 1922, with order thereon overruling the same.

4. Response of Respondents, filed on the 10th day of April, 1922.

5. Amendment allowed complainant on the 23rd day of April, 1922, and filed in office May 1, 1922.

[fol. 426] 6. Response of Respondents, filed September 26, 1922, to an amendment of complainant of April 24, 1922.

7. Decision of the Honorable Beverly D. Evans granting temporary injunction, dated April 26, 1922.

8. Amendment allowed complainant by the Hon. William H. Barrett, United States Judge, dated September 21, 1922, in which complainant attached a complete copy of the record, what is known as State injunction suits, the first of which was brought to prevent the holding of an arbitration touching the valuation of the property which was assessed, and the other being a suit brought by the State to set aside such arbitration so held.

9. Amendment to original bill allowed complainant on September 26, 1922, and filed September 26, 1922, setting out additional paragraphs to the original bill designated as 25 (a) and (b) etc.

10. Respondents' motion to dismiss plaintiff's amendment of September 21, 1922, filed in office September 26, 1922, together with order thereon overruling same.

11. Amended response to an amendment offered by complainant making certain additions to paragraphs 38 and 40 etc., of the complaint filed September 26, 1922.

12. Response to another amendment offered by complainant on the 25th day of September, 1922, filed October 12, 1922.

13. Response to amendment of complainant in which he attached certain sub-paragraphs 25 (a) and (b) etc., filed in office October 12, 1922.

14. Decision of the Hon. William H. Barrett, District Judge, granting injunction, dated June 25, 1923.

15. Petition for appeal and order allowing the same, filed herewith, together with citation, and acknowledgment of service thereon.

16. Transcript of evidence filed herewith.

[fol. 427] 17. Assignments of error filed herewith.

Wherefore, Appellants pray that a transcript of the portions of the record as herein specified be properly certified and transmitted to the Supreme Court of the United States of America to the October Term, 1923.

George M. Napier, Attorney General; Seward M. Smith, Asst. Atty. General; Benj. E. Pierce, Wallace B. Pierce, Wm. K. Miller, Solicitors for Appellants.

It is hereby agreed between counsel for appellants and appellee that the foregoing precipe specifies such portions of the record in the within stated cause as will enable a clear understanding of the errors complained of on the appeal entered therein. This August 28th, 1923, and the service of a copy thereof is hereby acknowledged by Appellee therein.

Benj. E. Pierce, Wallace B. Pierce, Attorneys for Appellants.
E. H. Callaway, W. M. Howard, Attorneys for Appellee.

I hereby certify that the foregoing precipe specifies such portions of the record in the within entitled cause as will enable a clear understanding of the issues involved, and the same is hereby ordered filed; and the Clerk of this Court is hereby ordered to make out and certify copies of the same under his hand and seal, and duly transmit the same to the October Term, 1923, of the Supreme Court of the United States as in such cases is prescribed by law. August 28th, 1923.

Wm. H. Barrett, United States Judge.

[fol. 428] [File endorsement omitted.]

[fol. 429] United States of America,
Southern District of Georgia, ss:

In United States District Court

Clerk's Certificate

I, L. M. Erwin, Clerk of the District Court of the United States for the Southern District of Georgia, Notrheastern Division, do hereby certify that the above and foregoing 428 pages is a full, true and correct copy and transcript of the record, the proceedings had, and the orders and judgments entered, in a certain cause numbered Thirty-Three (33) on the Equity Docket of said Court, wherein Charles S. Bohler, Tax Collector of Richmond County, Georgia, Clifford A. Steed, Tax Receiver of Richmond County, Georgia, J. T. Plunkett, Sheriff of Richmond County, Georgia, State of Georgia, Richmond County, and Board of Education of Richmond County, are defendants (now appellants), and E. H. Callaway, as Executor of the Estate of J. B. White, is complainant (now appellee), as fully as the same remains on file and of record in my office at Augusta, Georgia; except that the original petition for appeal and order allowing the same, the original citation on appeal and acknowledgment of service thereon, the original assignment of errors, the original transcript of the evidence, the original appeal bond, and the original præcipe for the transcript are included therein as pages 303 to 428 inclusive, instead of copies thereof.

The foregoing constitutes the entire record in the cause.

I further certify that all the costs which have accrued in this Court have been paid.

Witness my official signature and the seal of said Court at Augusta in the Southern District of Georgia this the 29th day of August, A. D., 1923, in the 148th year of the Independence of the United States.

L. M. Erwin, Clerk, By C. J. Skinner, Jr., Deputy. (Seal of U. S. District Court, So. Dist. Georgia.)

[fol. 430] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

PETITION FOR AND ORDER ALLOWING CROSS-APPEAL—Filed Aug. 30, 1923

To the Honorable Wm. H. Barrett, judge of said court:

Chas S. Bohler, Tax Collector of Richmond County, Georgia, C. A. Steed, Tax Receiver of Richmond County, Georgia, J. T. Plunkett, Sheriff of Richmond County, Georgia, State of Georgia, Richmond County, and Board of Education of Richmond County, defendants in the above stated cause, having filed and had allowed their petition for direct appeal from the decision and decree of this Court in the above stated cause, to the Supreme Court of the United States, and having by præcipe designated all of the pleadings in said cause and an agreed statement of the evidence, now comes E. H. Callaway, as the Executor of the Estate of J. B. White, Plaintiff in the above stated cause and Appellant herein, by E. H. Callaway and W. M. Howard, his attorneys, and feeling himself aggrieved by the final decree of this court entered on the 25th day of June 1923, hereby prays that a cross-appeal be allowed to him from said decree, to the United States Supreme Court, and in connection with this petition, [fol. 431] petitioner herewith presents his assignments of error in said cross-appeal.

And this Appellant further prays that the Court fix an order for such a Bond as may be required of him in reference to cost herein.

E. H. Callaway, W. M. Howard, Attorneys for E. H. Callaway, Executor of the Estate of J. B. White, Plaintiff.

The cross-appeal prayed for in the foregoing petition of E. H. Callaway, as Executor of the Estate of J. B. White against Chas S. Bohler, Tax Collector of Richmond County, Georgia, C. A. Steed, Tax Receiver of Richmond County, Georgia, J. T. Plunkett, Sheriff of Richmond County, Georgia, State of Georgia, Richmond County and Board of Education of Richmond County, is hereby allowed.

Ordered further, that the Appellant give security in the sum of $6,500.00, as found by the Statute, in such cases made and provided. This 29th day of August, 1923.

Wm. H. Barrett, United States Judge.

[File endorsement omitted.]

[fol. 432] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA, NORTHEASTERN DIVISION

[Title omitted]

ASSIGNMENT OF ERRORS BY E. H. CALLAWAY, EXECUTOR OF THE ESTATE OF J. B. WHITE, PLAINTIFF IN THE ABOVE-ENTITLED CAUSE AND APPELLANT HEREIN, ON CROSS-APPEAL—Filed Aug. 30, 1923.

And now comes the said E. H. Callaway, Executor of the Estate of J. B. White, Plaintiff in the above entitled cause and Appellant herein, and in connection with his petition for cross-appeal, assigns the following errors:

First. The Court erred in its said decision and decree in said cause, rendered June 25th, 1923, in holding that neither the decision of the Judge of the Superior Court of Richmond County, on September 2nd, 1919, in refusing to grant an Injunction upon the petition of the State of Georgia, et al., brought to enjoin the tax arbitration proceedings, between the Executor of the Estate of White and Steed, Tax Receiver of Richmond County, Georgia, nor the decision of the Supreme Court of Georgia affirming the same, nor the sustaining of the demurrer presented by E. H. Callaway, the Executor of White to an equitable petition brought by the State of Georgia, et al., to set aside the award rendered by the arbitrators in said tax arbitration proceedings, nor the subsequent affirmance thereof by the Supreme Court of Georgia, was res judicata as to the validity and binding [fol. 433] force of said award rendered in said tax arbitration proceedings, the court holding in paragraph 2 as follows:

"None of the decisions of the Courts of Georgia are conclusive as res adjudicata in establishing the validity of the award;"

said plea of res judicata having been fully set forth in complainant's amendment to his original bill allowed by the Court September 21st, 1922, and appearing as a part of the record in the direct appeal in this cause.

Second. The Court erred in holding in paragraph 3 of the decree, that the Tax Act of the General Assembly of Georgia of 1918, Public Acts page 232, repealed what is known as the Tax Arbitration Act of 1910, codified in Parks Code of Georgia, Section 1116-d, and

that said Act of 1918 was the existent law as to remedies for conditions like those in this case.

Third. The Court erred in holding that said Act of the General Assembly of Georgia of 1918, Public Acts page 232, which provided in Section 5 thereof as follows:

"That if the delinquent or his personal representative or representatives, as provided under Section 3 of this Act, refuses or fails to return such property after notice given him, it shall be the duty of the tax receiver to assess such property for taxation from the best information he can obtain as to its value for the years in default, and notify such delinquent of the valuation, which shall be final unless the person or persons so notified raise the question that it is excessive, in which event further procedure shall be by petition in equity in the Superior Court of the county where such property is assessed,"

provided due process of law "because opportunity is afforded to be heard as to the excessiveness of the tax or its legality."

Fourth. The Court erred in not holding that said Act of the General Assembly of Georgia of 1918, was unconstitutional and void, and in violation of that clause of the Fourteenth Amendment to the Constitution of the United States, which prohibits any State from depriving any person of life, liberty or property without due process of law, since courts of equity have no power in Georgia to assess property for taxation, and said Act did not confer such power, nor did [fol. 434] it provide the method, ways or rules therefor.

Fifth. The Court erred in said decree, in the 5th paragraph thereof, in holding and decreeing as follows:

"However, the taxes owing should have been paid without condition. The amount tendered on September 5th, 1919 was $27,980.88 and was upon condition that it was 'in full payment of the above taxes and interest as calculated upon the assessments rendered by the Board of Arbitrators on September 2nd, 1919.' On September 25th, 1922 the same amount was paid by the Executor of the estate of White, unconditionally.

"In the view herein expressed, I am of the opinion that there must be paid interest on such amount, $27,980.88 for the period from September 5th, 1919 to September 25th, 1922, and so hold."

Sixth. The Court erred in said decision and said decree in assessing said interest on said taxes against the plaintiff in said cause, and the appellant herein, because said tender as made on September 5th was a valid, legal tender of all the taxes based upon the assessment of said Board of Tax Arbitration, as calculated by the Tax Collector upon said assessments, and included $21,950, as the aggregate principal amount of taxes due upon said assessments for the years 1911 to 1917 inclusive and $6,030.88 as the accumulated in-

terest thereon to September 5th, 1919, and said tender was refused by said Tax Collector and the same amount was tendered by said Executor of J. B. White to said Tax Collector on March 6th, 1922, after the decision of the Supreme Court of Georgia was rendered in said tax litigation, affirming the lower court in sustaining the demurrer to the equitable petition brought to set aside said award, and again refused by said Tax Collector, and the receipt as given by the Tax Collector to the Executor of J. B. White upon the actual payment of said taxes on September 25th, 1922, did not differ in substance from the form of tender as made in the first instance, and the tender was continuous from September 5th, 1919 until the amount was actually accepted by said Tax Collector on September 25th, 1922, and under the laws of Georgia, the continuous tender re-
[fol. 435] lieved the taxpayer from future interest on the taxes due.

Seventh. The Court erred in the amount of interest awarded against said Executor and taxpayer in said decree, because the decree as rendered by the court covers interest upon $6,030.88, which itself is interest, and which is illegal, compound interest, and contrary to the statutes relating to interest on taxes in Georgia.

By reason whereof, this Appellant prays that said decree in the respects hereinbefore referred to, may be reversed and remanded, with directions to proceed in accordance with the law.

E. H. Callaway, W. M. Howard, Attorneys for E. H. Callaway, Executor of J. B. White, Appellant.

The foregoing assignments of error having been presented to me; ordered, that the same be filed and become a part of the record on said cross-appeal.

This 29th day of August, 1923.

Wm. H. Barrett, U. S. Judge.

Due and legal service of a copy of the foregoing assignments of error on cross-appeal, is hereby acknowledged. August 29, 1923.

George M. Napier, Atty. General; Seward M. Smith, Asst. Atty. General; Benj. E. Pierce, Wallace B. Pierce, Wm. K. Miller, Solicitors for Appellees in Cross-appeal.

[File endorsement omitted.]

[fol. 436] Bond on Cross-appeal for $6,500—Approved and filed Aug. 30, 1923; omitted in printing

[fol. 437] [File endorsement omitted.]

[fol. 438] In the District Court of the United States for the Southern District of Georgia, Northeastern Division

[Title omitted]

Citation on Cross-appeal—Filed Aug. 30, 1923; omitted in printing

[fol. 439] Due and legal Service of a copy of the foregoing citation on appeal is hereby acknowledged. All further notice and service waived. This 29 day of August, 1923.

George M. Napier, Atty. General; Seward M. Smith, Asst. Atty. General; Benj. E. Pierce, Wallace B. Pierce, Benj. E. Pierce, Solicitors for Appellees.

[fol. 440] In United States District Court

Clerk's Certificate

United States of America,
Southern District of Georgia, ss:

I, L. M. Erwin, Clerk of the District Court of the United States for the Southern District of Georgia, Northeastern Division, do hereby certify that the foregoing 11 pages is a full, true and correct copy and transcript of the record on cross-appeal, in a certain Cause numbered Thirty-Three (33) on the Equity Docket of said Court, wherein E. H. Callaway, as Executor of the Estate of J. B. White, is complainant (now appellant), and Charles S. Bohler, Tax Collector of Richmond County, Georgia; C. A. Steed, Tax Receiver of Richmond County, Georgia; J. T. Plunkett, Sheriff of Richmond County, Georgia; State of Georgia, Richmond County, and Board of Education of Richmond County, are defendants (now appellees), as fully as the same remains on file and of record in my office at Augusta, Georgia; except that the original citation on cross-appeal and acknowledgment of service thereon are included therein (as pages 9 and 10) instead of copies thereof.

Witness my official signature and the seal of said Court at Augusta in the Southern District of Georgia this 31st day of August, A. D., 1923, in the 148th year of the Independence of the United States of America.

L. M. Erwin, Clerk, By C. J. Skinner, Jr., Deputy. (Seal U. S. District Court, So. Dist. Georgia.)

Endorsement on cover: File Nos. 29,861, 29,862. S. Georgia D. C. U. S. Term No. 551. Charles S. Bohler, tax collector of Richmond County, Georgia, et al., appellants, vs. E. H. Callaway, as executor of the estate of J. B. White, deceased. Term No. 552. E. H. Callaway, as executor of the estate of J. B. White, deceased, appellant, vs. Charles S. Bohler, tax collector of Richmond County, Georgia, et al. Filed September 17th, 1923. File Nos. 29,861, 29,862.